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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

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV98–979–1 FIR]

Melons Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1997, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to decrease the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.07 per carton to $0.04 per carton.

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

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a telephone vote, unanimously recommended 1997–98 administrative expenses of $100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in September 1997. The assessment rate and funding for research projects, promotion, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on December 16, 1997, and unanimously recommended 1997–98 expenditures of $158,200 and an assessment rate of $0.04 per carton of melons. In comparison, last year's budgeted expenditures were $308,000. The assessment rate of $0.04 is $0.03 lower than the rate previously in effect. At the former rate of $0.07 per carton, the assessment income would have exceeded anticipated expenses by about $112,700, and the projected reserve of $234,269 on September 30, 1998, would have exceeded the level the Committee believes to be adequate to administer the program. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The

reduced assessment rate is expected to bring assessment income closer to the amount necessary to administer the program for the 1997–98 fiscal period.

Major expenses recommended by the Committee for the 1997–98 fiscal year include $84,500 for personnel and administrative expenses, $40,500 for compliance, $23,200 for research projects, and $10,000 for promotion. Budgeted expenses for these items in 1996–97 were $84,500, $115,500, $108,000, and $0, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Melon shipments for the year are estimated at 3,870,000 cartons, which should provide $154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $228,669) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The remainder of the Committee's 1997–98 budget was approved December 23, 1997, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 33 producers of South Texas melons in the production area and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

This rule continues in effect the assessment rate of $0.04 per carton established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $158,200 and an assessment rate of $0.04 per carton of melons. In comparison, last year's budgeted expenditures were $308,000. The assessment rate of $0.04 is $0.03 less than the rate previously in effect. At the former rate of $0.07 per carton and an estimated 1998 melon production of 3,870,000 cartons, the projected reserve on September 30, 1998, would have exceeded the level the Committee believes necessary to administer the program. The Committee decided that an assessment rate of less than $0.04 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1997–98 fiscal period include $84,500 for personnel and administrative expenses, $40,500 for compliance, $23,200 for research projects, and $10,000 for promotion. Budgeted expenses for these items in 1996–97 were $84,500, $115,500, $108,000, and $0, respectively.

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Recent price information indicates that the grower price for the 1997–98 marketing season will range between $7.00 and $9.00 per carton of cantaloupes and between $5.00 and $7.00 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .006 and .004 percent for cantaloupes and between .008 and .006 percent for honeydew melons.

This rule continues to decrease the assessment obligation imposed on handlers. While this rule imposes some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

An interim final rule concerning this action was published in the **Federal Register** on January 29, 1998 (63 FR 4366). The interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on March 30, 1998, and no comments were received.

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

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 979 which was published at 63 FR 4366 on January 29, 1998, is adopted as a final rule without change.

Dated: May 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–12291 Filed 5–7–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–40–AD; Amendment 39–10514; AD 98–10–03]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company Model 250–C47B Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) 97–21–09, applicable to Allison Engine Company Model 250–C47B turboshaft engines, that currently requires replacing the engine main electrical harness assembly with an improved assembly, installing a new hydromechanical unit (HMU) and electronic control unit (ECU), removing the placard notifying the pilot that the overspeed protection system is disabled, and revising the Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC), Model 407 Rotorcraft Flight Manual (RFM). This amendment continues the requirements of the current AD, but adds the requirement to install ECUs with improved resistance to corrosion. This amendment is prompted by reports of ECUs with annunciated hard faults due to corrosion on internal connectors. The actions specified by this AD are intended to prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

DATES: Effective May 26, 1998.

The incorporation by reference of Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB–A–73–6010, dated October 15, 1996, CEB A–73–6015, Revision 1, dated July 30, 1997, and Revision 2, dated October 31, 1997, and BHTC Flight Manual BHT–407–FM–1, Revision 5, dated June 24, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 3, 1997 (62 FR 61438, November 18, 1997).

The incorporation by reference of Allison Engine Company Alert CEB–A–73–6017, Revision 1, dated February 18, 1998, and Revision 2, dated April 9, 1998, is approved by the Director of the Federal Register as of May 26, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P–40A, Indianapolis, IN 46206–0420; telephone (317) 230–2720, fax (317) 230–3381. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7134, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On November 10, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97–21–09, Amendment 39–10162 (62 FR 61438, November 18, 1997), to require replacing the engine main electrical harness assembly with an improved assembly, installing a new hydromechanical unit (HMU) and electronic control unit (ECU), removing the placard notifying the pilot that the overspeed protection system is disabled, and revising the Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 Rotorcraft Flight Manual (RFM). That action was prompted by development of overspeed protection system modifications to reactivate the overspeed solenoid (which had been disabled in accordance with AD 96–24–09 to prevent engine shutdown due to zero fuel flow when tripped) in conjunction with raising the power turbine overspeed trip point and revising the overspeed system to default to a minimum fuel flow in the event of its activation. That condition, if not corrected, could result in uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

Since the issuance of that AD, the FAA received reports of two BHTC 407 rotorcraft involved in incidents where there was an annunicated hard fault with the ECU. In each case, the result was a failed fixed event in which the pilot transitioned to manual mode without incident. The hard faults have been attributed to corrosion on internal connectors. Subsequent to the incidents, the manufacturer conducted an initial investigation on returned ECUs and found two additional units with corrosion on internal connectors.

The FAA has reviewed and approved the technical contents of Allison Engine Company Alert CEB–A–73–6017, Revision 1, dated February 18, 1998, and Revision 2, dated April 9, 1998, that describes procedures for installing ECUs with improved resistance to corrosion.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 97–21–09 and continues to require replacement of the engine main electrical harness assembly with an improved assembly, and, after replacing the ECU and HMU, removing the ''OVRSPD SYSTEM INOP'' placard required by paragraph (d) of AD 96–24–09, revising the BHTC Model 407 RFM. These actions are now required prior to further flight, if not already accomplished. In addition, this AD adds a requirement to install an ECU with improved resistance to corrosion within 45 days after the effective date of this AD, based upon the need to protect the affected engines against effects of corrosion. Installation of the improved, corrosion resistant ECU will meet the requirement to install a new ECU. The requirements of paragraph (c) of this AD have been coordinated with the Rotorcraft Directorate. The actions are required to be accomplished in

accordance with the service documents described previously.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–40–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10162, (62 FR 61438, November 18, 1997), and by adding a new airworthiness directive, Amendment 39–10514, to read as follows:

98–10–03 Allison Engine Company: Amendment 39–10514. Docket 97–ANE–40–AD. Supersedes AD 97–21–09, Amendment 39–10162.

Applicability: Allison Engine Company Model 250–C47B turboshaft engines, installed on but not limited to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter, accomplish the following:

(a) Prior to further flight, replace the engine main electrical harness assembly, part number (P/N) 23062796, with an improved assembly, P/N 23065805, in accordance with Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB–A–73–6010, dated October 15, 1996.

(b) Prior to May 20, 1998, install a new hydromechanical control unit (HMU) and electronic control unit (ECU) in accordance with Allison Engine Company Alert CEB–A–73–6015, Revision 1, dated July 30, 1997, or Revision 2, dated October 31, 1997.

(c) After completing the requirements of paragraph (b) of this AD, and prior to further flight:

(1) Remove the ''OVRSPD SYSTEM INOP'' placard required by paragraph (d) of AD 96–24–09, and

(2) Revise the FAA-approved Rotorcraft Flight Manual (RFM) by removing the pages added by paragraph (f) of AD 96–24–09, and incorporate BHTC RFM BHT–407–FM–1, Revision 5, dated June 24, 1997.

(d) Within 45 days after the effective date of this AD, install a corrosion resistant electronic control unit (ECU) in accordance with Allison Engine Company Alert CEB–A–73–6017, Revision 1, dated February 18, 1998, or Revision 2, dated April 9, 1998. Installation of a corrosion resistant ECU in accordance with this paragraph will satisfy the requirement in paragraph (b) of this AD to install a new ECU.

(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, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

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

Document No.	Pages	Revision	Date
Allison Engine Company Alert, CEB–A–73–6010	1–7	Original	October 15, 1996.
Total pages: 7.			
BHTC Rotorcraft Flight Manual BHT–407–FM–1	Cover	5	June 24, 1997.
	NP	3	July 30, 1996.
	A,B	5	June 24, 1997.
	C/D	5	June 24, 1997.
	1–3	5	June 24, 1997.
	1–4–1–7	4	November 4, 1996.
	1–8	5	June 24, 1997.
	1–13	4	November 4, 1996.
	1–14	5	June 24, 1997.
	1–14A/14B	5	June 24, 1997.
	1–19/1–20	5	June 24, 1997.
	2–3	5	June 24, 1997.
	2–4	1	March 8, 1996.
	2–7–2–10	5	June 24, 1997.
	2–13, 2–14	5	June 24, 1997.
	3–3–3–5	5	June 24, 1997.
	3–6	2	May 9, 1996.
	3–7, 3–8	5	June 24, 1997.
	3–15	5	June 24, 1997.
	3–16	2	May 9, 1996.
	3–17–3–22	5	June 24, 1997.
	4–5, 4–6	5	June 24, 1997.
	4–9	Original	February 9, 1996.
	4–10–4–12	5	June 24, 1997.
Total pages: 40.			
Allison Engine Company Alert, CEB–A–73–6015	1–4	1	July 30, 1997.
Total pages: 4.			
Allison Engine Company Alert, CEB–A–73–6015	1–4	2	October 31, 1997.
Total pages: 4.			
Allison Engine Company Alert, CEB–A–73–6017	1–5	1	February 18, 1998.
Total pages: 5			
Allison Engine Company Alert, CEB–A–73–6017	1–5	2	April 9, 1998.
Total pages: 5			

(h) The incorporation by reference of Allison Engine Company Alert CEB–A–73–6010, dated October 15, 1996, CEB A–73–6015, Revision 1, dated July 30, 1997, and Revision 2, dated October 31, 1997, and BHTC RFM BHT–407–FM–1, Revision 5, dated June 24, 1997, was approved previously by the Director of the Federal Register as of December 3, 1997 (62 FR 61438, November 18, 1997).

(i) The incorporation by reference of Allison Engine Company Alert CEB–A–73–6017, Revision 1, dated February 18, 1998, and Revision 2, dated April 9, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 26, 1998.

(j) Copies of these service documents may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P–40A, Indianapolis, IN 46206–0420; telephone (317) 230–2720, fax (317) 230–3381. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on May 26, 1998.

Issued in Burlington, Massachusetts, on April 29, 1998.

Thomas A. Boudreau,

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

[FR Doc. 98–12063 Filed 5–7–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–017–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Louisiana regulatory program (hereinafter referred to as the ''Louisiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Louisiana proposed revisions to and additions of regulations pertaining to definitions, request for

hearing, permitting requirements, small operator assistance program, bond release requirements, performance standards, and enforcement procedures/civil penalties. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATES: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. Background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Submission of the Proposed Amendment

By letter dated October 24, 1997 (Administrative Record No. LA–362), Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. LA–361) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the November 19, 1997, **Federal Register** (62 FR 61712), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on December 19, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to Section 2725., Reclamation plan: ponds, impoundments, bank, dams and embankments, and Section 6507., Service of notices of violation and cessation orders. OSM notified Louisiana of these concerns by electronic mail dated March 12, 1998, (Administrative Record No. LA–362.07).

By letter dated March 24, 1998 (Administrative Record No. AL–362.09), Louisiana responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed program amendment. Louisiana proposed additional revisions to paragraph A. and A.2. of Section 2725., Reclamation plan: ponds, impoundments, bank, dams and embankments. Because the additional information merely clarified certain provisions of Louisiana's proposed amendment, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Louisiana's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State regulations and the Federal regulations are nonsubstantive.

Topic	State Regulation	Federal Counterpart Regulation
Definitions: ''other treatment facilities,'' ''previously mined area,'' and ''qualified laboratory''.	Section 105	30 CFR 701.5 and 795.3.
Reclamation plan: Ponds, Impoundments, Bank, Dams and Embankments—General.	Section 2725.A, A.2., A.3., A.3.a., C.1., and F.	30 CFR 780.25(a), (a)(2), (a)(3), (a)(3)(i), (c)(3), and (f).
Prime Farmlands Issuance of Permit	Section 2907.C.5	30 CFR 785.17(e)(5).
Eligibility for Assistance	Section 3705.A.2.a. and A.2.b	30 CFR 795.6(a)(2)(i) and (a)(2)(ii).
Program Services and Data Requirements	Section 3711.A., B.1. through B.6	30 CFR 795.9(b)(1) through (b)(6).
Applicant Liability	Section 3717.A., A.2., and A.3	30 CFR 795.12(a), (a)(2), and (a)(3).
Backfilling and Grading: Thin Overburden	Section 5411.A	30 CFR 816.104(a).
Backfilling and Grading: Thick Overburden	Section 5413.A	30 CFR 816.105(a).
Prime Farmland: Soil Removal	Section 5503.A.2	30 CFR 823.12(c)(2).
Prime Farmland: Soil Replacement	Section 5507.A.4	30 CFR 823.14(d).
Service of Notices of Violation and Cessation Orders	Section 6507.A.2	30 CFR 843.14(a)(2)
Procedures for Assessment Conference	Section 6915.B.1.	30 CFR 845.18(b)(1).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Louisiana's proposed regulations are no less effective than the Federal regulations.

B. Section 2537. Permit Application Requirements

Louisiana proposed to delete paragraph A.11. regarding cross sections, maps, and plans from its regulations. The Director is approving this deletion because OSM deleted the Federal counterpart regulation from its regulations that was previously found at 30 CFR 779.25(a)(11) (See 59 FR 27932, dated May 27, 1994).

C. Section 3705. Eligibility for Assistance

At paragraph A.2., an applicant is eligible for assistance if his or her probable total actual and attributed production from all locations does not exceed 100,000 tons during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance

of his or her permit, whichever period is shorter. Louisiana proposed to increase the tonnage limit to 300,000 tons. The Director is approving this tonnage increase because it will result in the State regulation being no less effective than the counterpart Federal regulation at 30 CFR 795.6(a)(1).

D. Section 4501. Procedures for Seeking Release of Performance Bond

Louisiana proposed to add new paragraph A.3. that requires each application for each phase of bond release to include a notarized statement certifying that all applicable reclamation activities have been accomplished in accordance with the requirements of the State Act, the regulatory program, and the approved reclamation plan. Louisiana also proposed to redesignate old paragraph A.3 as A.4. The Director is approving the revisions because the resulting regulations will be no less effective than the counterpart Federal regulations at 30 CFR 800.40 (a)(2) and (a)(3).

E. Section 5333. Hydrologic Balance: Impoundments

Louisiana proposed to add new paragraph A.1. that requires impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (120–VI–TR60, Oct. 1985), ''Earth Dams and Reservoirs,'' to comply with the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60 and the requirements of Section 5333. Louisiana also proposed to redesignate paragraphs A.1. through A.12. as paragraphs A.2. through A.13. The Director is approving these revisions because they will not render the State regulations less effective than the counterpart Federal regulations at 30 CFR 816.49.

F. Section 6913. Procedures for Assessment of Civil Penalties

Paragraph B. of this section pertains to procedures the State can use to serve a person, who is issued a violation notice or cessation order, a copy of the proposed civil penalties assessment and the worksheet showing the computation of the proposed assessment. Louisiana proposed to add a new and alternative provision for serving these documents. The new provision allows the State to use any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure. The Director is approving the new provision because it is no less effective than the counterpart Federal regulation at 30 CFR 843.14(a)(2).

G. Section 6917. Request for Hearing

At paragraph A., Louisiana allows a person charged with a violation 15 days, from the date of service of the conference office's action, to contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty. Louisiana proposed to change from 15 days to 30 days the amount of time for contesting the proposed penalty or the fact of the violation after the date of service of the conference office's action. The Director is approving this revision because it will make the State regulation no less effective than the counterpart Federal regulation at 30 CFR 845.19(a).

H. Section 7105. Procedure for Assessment of Individual Civil Penalty

Louisiana proposed to revise paragraph C. to read as follows:

C. Service. For purposes of this Section, service is sufficient if it would satisfy the Louisiana Rules of Civil Procedure for service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

The Director is approving this revision because it is no less effective than the counterpart Federal regulation at 30 CFR 846.17(c).

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Louisiana program.

In a letter dated November 17, 1997 (Administrative Record No. LA–362.04), the U.S. Army Corps of Engineers responded that Louisiana's changes to its program were satisfactory to their agency. The U.S. Department of the Interior's Fish and Wildlife Service also submitted comments in a letter dated November 17, 1997 (Administrative Record No. LA–362.05). this agency stated that it had no objections to the proposed amendments to Louisiana's Surface Mining Regulations and that the changes should result in greater program consistency and should not adversely impact fish and wildlife resources within their trusteeship.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. LA–362.01). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP).

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. LA–362.02). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Louisiana on October 24, 1997, and as revised on March 24, 1998.

The Director approves the regulations as proposed by Louisiana with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 918, codifying decisions concerning the Louisiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget

(OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96–5 CARP DSTRA]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Librarian of Congress, upon recommendation of the Register of Copyrights, is announcing the determination of the reasonable rates and terms for the compulsory license permitting certain digital performances of sound recordings.

EFFECTIVE DATE: May 8, 1998.

ADDRESS(ES): The full text of the public version of the Copyright Arbitration Royalty Panel's report to the Librarian of Congress is available for inspection and copying during normal working hours in the Office of the General Counsel, James Madison Building, Room LM–403, First and Independence Avenue, SE., Washington, DC, 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Digital Performance Right in Sound Recordings Act of 1995 (DPRSRA), Public Law 104–39, 109 Stat. 336, amended section 106 of the Copyright Act, title 17 of the United States Code, to give sound recording copyright owners an exclusive right, subject to certain limitations, to perform publicly sound recordings by digital audio transmissions. 17 U.S.C. 114. The bill affords certain digital transmission

services a compulsory license to perform digital sound recordings publicly. The purpose of the bill is ''to provide copyright holders of sound recordings with the ability to control the distribution of their product by digital transmissions, without hampering the arrival of new technologies, and without imposing new and unreasonable burdens on radio and television broadcasters.'' S. Rep. No. 104–128, at 15 (1995).

All non-exempt digital subscription transmission services are eligible for the statutory license, provided that they are non-interactive and comply with the terms of the license. The statute requires that the service not violate the ''sound recording performance complement,'' [1] not publish in advance a schedule of the programming to be performed, not cause any receiving device to switch from one program channel to another, include in each transmission certain identifying information encoded in each sound recording, pay the royalty fees and comply with the associated terms, and comply with any recordkeeping requirements promulgated by the Copyright Office. [2] 17 U.S.C. 114(d)(2)(A)–(E) and 114(f)(2)–(5).

The reasonable terms and rates of the section 114 statutory license are determined by voluntary negotiations among the parties and, where necessary, compulsory arbitration conducted under chapter 8 of the Copyright Act, title 17. 17 U.S.C. 114(f).

II. The CARP Proceeding To Set Reasonable Rates and Terms

On December 1, 1995, the Librarian of Congress (Librarian) initiated the statutorily mandated six month negotiation period within 30 days of the enactment of the DPRSRA, pursuant to section 114(f)(1) of the Copyright Act, with the publication of a notice initiating the voluntary negotiation process for determining reasonable terms and rates of royalty payments. *See* 60 FR 61655 (December 1, 1995). In the notice, the Library instructed those parties with a significant interest in the establishment of the reasonable terms and rates for the section 114 license to file a petition with the Copyright Office no later than August 1, 1996, in the event that the interested parties were unable to negotiate an agreement. *Id.*

Accordingly, the Recording Industry Association of America (RIAA) filed a petition with the Copyright Office in which it asked the Office to initiate an arbitration proceeding pursuant to chapter 8 of the Copyright Act. After making a determination that the petitioner RIAA had a significant interest in the proposed CARP proceeding, the Librarian published a notice setting the schedule for the 45-day precontroversy discovery period and announcing the date for the initiation of the 180-day arbitration period. 61 FR 40464 (August 2, 1996). The exchange of documents during the precontroversy discovery period did not proceed smoothly, requiring the Office to reschedule portions of the discovery period and vacate the scheduled date for the initiation of the CARP. *See* Order in Docket No. 96–5 CARP DSTRA (September 18, 1996); Order in Docket No. 96–5 CARP DSTRA (November 27, 1996). The Librarian announced the initiation of the 180-day arbitration period following the conclusion of the discovery period and the resolution of all pending motions. 62 FR 29742 (June 2, 1997).

The Parties

There are four parties to this proceeding: three digital audio subscription services (the Services) and the Recording Industry Association of America (RIAA).

1. The Recording Industry Association of America, Inc. (RIAA)—RIAA represents a collective, consisting of more than 275 record labels, established for the express purpose of administering the rights of these sound recording copyright owners. RIAA represents the interests of its members who are the copyright owners of more than 90% of all legitimate sound recordings sold in the United States. Record companies own the copyrights in the sound recordings.

2. Digital Cable Radio Associates (DCR)—A digital audio service established in the United States in 1987 by the Jerrold Communications Division of General Instrument Corporation. Current partners include Warner Music, Sony Corporation, EMI, Time Warner Cable, Continental Cablevision, Comcast Cable, Cox Cable, and Adelphia Cable.

3. Digital Music Express, Inc. (DMX)—A digital music subscription service established in 1986 as International Cablecasting Technologies, Inc. In 1997, DMX merged into TCI Music, Inc., a publicly traded company with approximately 80% of its shares held by TCI, Inc.

4. Muzak, L.P.—With roots dating back to 1922, Muzak is America's oldest background music provider for businesses. In the 1920s and 1930s, Muzak was part of the consumer music market until driven out of that market by the growing popularity of radio. Muzak remained out of the market until March, 1996, when it began providing 27 channels of digital music under the name DiSHCD, as part of Echostar's satellite-based DiSH Network.

The Position of the Parties at the Commencement of the Proceeding

RIAA, representing the interests of the sound recording copyright owners, requested a royalty rate set at 41.5% of a Service's gross revenues resulting from U.S. residential subscribers, or in some circumstances, a flat rate minimum fee. Report of the Copyright Arbitration Royalty Panel (Report) ¶ 33. RIAA also agreed to be named the single entity to collect, administer, and distribute the royalty fees. Report ¶ 184. RIAA proposed additional terms concerning the timing of payments, statements of accounts, retention of records, and audits. Report ¶ 33.

The three digital audio subscription services requested a royalty rate ranging from a low of 0.5% to a high of 2.0% of gross revenues resulting from U.S. residential subscribers, and unanimously opposed a flat rate minimum fee. Report ¶¶ 34–36, 172. The Services proposed that a single private entity or a government agency be named for purposes of administering the royalty fees, but proposed submitting payments on a quarterly basis rather than a monthly basis. Report ¶¶ 184–185. In addition, the Services proposed terms concerning recordkeeping and audits, confidentiality of business records, and payment terms for distributing license fees among featured artists and nonfeatured musicians and vocalists.

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[1] (7) The ''sound recording performance complement'' is the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

(B) 4 different selections of sound recordings—

(i) By the same featured recording artist; or

(ii) From any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States, if no more than three such selections are transmitted consecutively: *Provided*, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

17 U.S.C. 114(j)(7).

[2] See Notice of Proposed Rulemaking, 61 FR 22004 (May 13, 1996); Notice of Proposed Rulemaking, 62 FR 34035 (June 24, 1997).

The Panel's Determination of a Reasonable Rate

The Panel evaluated the four statutory objectives,[3] and their component parts, in light of the evidence and determined that the digital audio subscription services should pay a royalty fee of 5% of gross revenues resulting from U.S. residential subscribers. Report ¶¶ 196, 200. This rate represents the midpoint of the range of possible license rates that the Panel considered appropriate (but not the midpoint of the parties' proposals). The Panel further concluded that there was no reason to impose a minimum license fee on the Services at this point, and consequently, it rejected RIAA's proposal to set a minimum fee based on a flat rate. Report ¶ 204.

In making this determination, the Panel followed the precedent set in prior rate adjustment proceedings conducted by the former Copyright Royalty Tribunal and other CARP panels which, as a first step, determined a range of possible rates after considering different proposed rates based on negotiated licenses or analogous marketplace models. Report ¶ 123. *See also*, 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884 (January 5, 1981), and the 1997 Rate Adjustment of the Satellite Carrier Compulsory License Fees, 62 FR 55742 (October 28, 1997). Each party offering a ''benchmark'' rate contends that the rate it offers represents the cost for similar products in analogous markets. The Panel considered three benchmarks, weighing each in light of the record evidence to determine whether the proposed models shed light on how the marketplace would value a performance license in sound recordings. Once the Panel identified the useful models, it used the corresponding rate information to craft a range of potential royalty rates for the section 114 license, then chose the rate within the range which would further the stated statutory objectives.

RIAA and the Services proposed rates based on three distinct marketplace models in which rates are set through arms-length negotiations. Report ¶ 124. The Services proposed two benchmarks for consideration by the Panel: Negotiated license fees for a sound recording performance right and the license fees the Services pay the performing rights organizations for use of the underlying musical works. RIAA put forth a single model for the Panel's consideration: Cable television network license fees. The Panel found the Services' models helpful in setting the rate for the digital performance right, but rejected the RIAA model for the reasons stated herein.

Both RIAA and the Services seemed to agree that the best proxy for reasonable compensation is a marketplace rate. The Panel, however, noted that the DPRSRA instructs the CARP to set reasonable rates, which need not be the same as rates set in a marketplace unconstrained by a compulsory license. In support of its interpretation, the Panel cited the statutory factors which must be considered in setting the rate. *See* Report ¶¶ 10, 124.

The Panel's Evaluation of the RIAA Benchmark

The benchmark proposed by the recording industry analogizes the cost of programming for cable television networks with the cost of procuring the right to perform the sound recordings. The analogy, however, did not withstand scrutiny by the Panel, which reasonably found that the cable television network license fees model did not represent rates for an analogous product in a comparable marketplace. Its conclusion rested on a number of findings which described analytical deficiencies in the two studies offered in support of the 41.5% proposed royalty rate. Report ¶¶ 126–150.

The RIAA model proposed using the purchase price of programming for cable television networks to determine the price the Services would pay for the right to publicly perform sound recordings, if negotiated in a free market. RIAA's Proposed Findings of Fact and Conclusions of Law (PF) ¶ 62; RIAA Proposed Conclusions (PC) ¶ 18. RIAA presented two studies that illustrate the amount of money cable television networks pay for their programming: (1) The Kagan study,[4] and (2) the Wilkofsky Gruen Associates[5] study. RIAA Exhibits (Exs.) 14 and 15, respectively. Both studies argued that the analogy between cable television networks and the digital audio services was apt because the digital audio services and the cable television networks compete head-to-head for carriage on cable and DBS systems, and for consumer time and discretionary income. Report ¶ 130.

The Kagan study analyzed data concerning the revenues and programming expenses of 31 basic cable television networks from the 1985–96 period. It concluded that a cable television network spends, on average, approximately 40% of its gross revenues for programming. RIAA Exhibit (Ex.) 14 at 7. The Panel, however, discounted the 40% figure because it represented the costs of license fees to all copyright owners, and it included the costs of programming during the start-up years, when a new cable television network may pay more than 100% of its revenues in programming costs. Report ¶¶ 127, 129, 149. Failure to adjust for these factors made it impossible for the Panel to assess the costs for the right to publicly perform the sound recordings apart from the costs of the other copyrighted works which make up the program.

Their second study, prepared by Wilkofsky Gruen Associates (WGA), analyzed only cable movie networks because Wilkofsky, the expert for the study, claimed that the ''pricing characteristics and dynamics'' of the cable movie networks were comparable in three fundamental ways: The lack of commercials, the generation of revenues through subscriptions, and the purchase of programming from third parties. Wilkofsky Written Direct Testimony (W.D.T.) at 3–5. This study concluded that the cable movie networks pay a weighted average of 41.5 % of their revenues for programming that they acquire from outside sources and by analogy, the Services should pay the same. *Id.* at 3.

The Panel rejected the conclusion of the WGA study because it ignored the following fundamental differences in market demand and cost characteristics between the cable movie networks and the digital audio services. Report ¶¶ 133–145.

[3] (1) to make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 114, 115, and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118. The rates applicable under section 114, 115, and 116 shall be calculated to achieve the following objectives:

(A) To maximize the availability of creative works to the public;

(B) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;

(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 801(b)(1).

[4] The Kagan study was prepared by Paul Kagan Associates, a media research company that tracks and publishes financial data concerning the media and entertainment industries.

[5] Wilkofsky Gruen Associates is an economic consulting firm that specializes in the communications and entertainment industries.

1. The study provided no evidence to show that any of the movie networks directly compete with digital audio services. In fact, when people watch a movie, they devote their entire attention to the film for a period of time, and generally, do not repeat the experience with the same movie. On the other hand, subscribers to digital audio services choose to listen to the same music again and again while engaged in other activities. In other words, the subscriber chooses each service for different reasons, and therefore, they do not represent choices in the same market. Report ¶¶ 143, citing Rosenthal Written Rubuttal Testimony (W.R.T). at 13, Transcript (Tr). 1251 (Rubinstein).

2. The cable movie networks compete against other cable and broadcast stations for exclusive rights to motion pictures. Exclusive rights are highly prized, and consequently, command a premium price, but they are not implicated in the market for digital audio transmissions. Consequently, the Panel found that RIAA's failure to adjust for this aspect grossly overstated the value of programming costs in its cable movie network analogy. Report ¶¶ 137–142.

3. The Panel further discounted the analogy because RIAA ignored the promotional benefit that flows to the record companies from the constant airplay of their sound recordings. Report ¶¶ 144–145. *See also discussion infra.*

The Panel's Determination of Reasonable Terms

In addition to establishing a reasonable rate for the sound recording performance license, the Panel must also establish reasonable terms for implementing the license. The Senate Committee Report makes clear that terms include ''such details as how payments are to be made, when, and other accounting matters.'' S. Rep. No. 104–128, at 30 (1995).

RIAA and the Services proposed specific terms concerning minimal fees, payment schedules, late fees, statements of account, and audits. From these, the Panel adopted the following terms:

1. RIAA shall have sole responsibility for the distribution of the royalty fees to all copyright holders. Report ¶¶ 184, 205.

2. The license fee payments shall be due on the twentieth day after the end of each month, beginning with the month succeeding the month in which the royalty fees are set. Report ¶¶ 185, 206.

3. The Services shall make back payments over a 30-month period. The first back payment, 1/30th of the total arrearage, shall be delayed for six months. Report ¶¶ 187, 206(a).

4. A Service shall be subject to copyright liability if it fails to make timely payments. Liability for copyright infringement shall only come about for knowing and willful acts which materially breach the statutory license terms. Report ¶¶ 188, 206(b).

5. A late fee of 1.5% per month or the highest lawful rate, whichever is lower, will be imposed from the due date until payment is received. Report ¶¶ 189, 206(a).

6. Services shall submit monthly statements of accounts and payment to RIAA. Only information to verify the royalty payments need be provided on the monthly statements of account. Report ¶¶ 190, 205, 207.

7. Safeguards must be established to protect against disclosure of confidential financial and business information, which includes the amount of the royalty payment. Access to this information shall be limited to employees of RIAA, who are not employees or officers of the copyright owners or the recording artists, for the purpose of performing their assigned duties during the ordinary course of employment, and to independent auditors acting on behalf of RIAA. Report ¶¶ 191, 208.

8. The digital audio services shall maintain accurate records on matters directly related to the payment of the license fees for a period of three years. Report ¶¶ 192, 209.

9. Interested parties may conduct only one audit of a digital audio service during any given year. Report ¶¶ 193, 210(c).

- Interested parties must file a Notice of Intent to Conduct an Audit with the Copyright Office. Such notice shall be published in the **Federal Register**. Report ¶¶ 193, 210(a)–(b).
- RIAA must retain an auditor's report for a period of three years. Report ¶¶ 193, 210(d).
- An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, may serve as an audit for all interested parties. Report ¶¶ 194, 210(e).
- Interested parties shall pay for the cost of the audit, unless an independent auditor concludes that there was an underpayment of five (5) percent or more. Report ¶¶ 195, 210(f).

The Panel chose not to adopt RIAA's minimum fee proposal and the Services' proposed payment schedule for the distribution of royalties to the featured artists and the nonfeatured musicians and vocalists. The Panel found that the timing of payments to the performing artists was not within the scope of the proceeding. Report § 204; Report at 56 n.21.

The Panel's Evaluation of the RIAA Proposal To Adopt a Minimum Fee

RIAA proposed the imposition of a minimum fee as a means to insure a fair return to the copyright owners in light of business practices that might erode the value of the statutory license fee. RIAA PF ¶¶ 126–147. Specifically, RIAA sought a minimum fee to minimize the effect of discounts or credits, to address shifts in business models, and to avoid diluting the value of the sound recording when audio digital services add new channels to their offerings. *Id.* The Panel ultimately rejected this suggestion because it found that the rationale for a minimum fee was based on unsupported speculation about the business structure of the Services. Report ¶ 204.

III. The Parties' Reaction to the Determination of the Panel

The regulations governing the CARP proceedings allow parties to file petitions to modify or set aside the determination of the Panel within 14 days of its filing date. The petition must state the reasons for the petition, including relevant references to the parties' proposed findings of fact and conclusions of law. Parties who wish to file replies to a petition may do so within 14 days of the filing of such petition. See 37 CFR 251.55(a), (b).

Accordingly, on December 12, 1997, RIAA filed a Petition to Reject the Report of the CARP (Petition), contending that the Panel acted both contrary to the Copyright Act and arbitrarily in reaching its determination. In its petition, RIAA requests the Librarian to set aside the Panel's determination and set a new rate that should not be less than double the Services' 1996–2001 payments for the public performance of the underlying musical works.

RIAA contends that the Panel's determination was arbitrary and contrary to law for the following reasons:

1. The Panel disregarded precedent set by the former Copyright Royalty Tribunal (CRT or Tribunal) in applying the statutory criteria for determining a reasonable rate for the public performance right. Petition at 6, 14–15.

2. The Panel used the rates set in a corporate partnership agreement as a benchmark for establishing the new compulsory license rate. This was inappropriate because the public performance in sound recordings

license agreement was not negotiated independently, but as part of a larger complex agreement. *Id.* at 20–27.

3. When the Services publicly perform a sound recording, two groups of copyright owners receive royalties: The copyright owners in the underlying musical works, and for the first time, the record companies and performers. The Panel determined that the record companies and performers were not entitled to more royalties for their public performance right than those received by the copyright owners in the underlying musical works for the public performance of their works. RIAA contends that CRT precedent supports a determination that just the reverse is true. *Id.* at 14–15.

4. The compulsory license allows the Services to perform sound recordings publicly without infringing copyright prior to the setting of the royalty rate, so long as the Services agree to pay their accumulated royalty obligation once the rates are determined. The Panel created a payment schedule that allows the Services to pay these fees over a three year period. RIAA contends that this payment schedule is contrary to law. *Id.* at 7 n.1.

5. RIAA also contends that the CARP failed to provide a reasoned explanation for proper review, made conclusions inconsistent with its findings, made findings without record support, and failed to make findings in support of conclusions. *Id.* at 2.

RIAA, however, does not suggest that the Librarian disregard all the findings of the Panel. Instead, it recommends adopting the Panel's approach ''to determine a reasonable rate—provided that the Librarian makes the necessary adjustments to account for the precedent and considerations that the Panel ignored.'' Petition at 51–52. RIAA further allows that the Librarian need not consider the cable network benchmark in its analysis, since the Panel's analysis of the remaining benchmarks supports an upward adjustment of the 5% rate of gross revenues set by the CARP. Petition at 52 n.9.

On December 29, 1997, in response to the RIAA petition to reject the CARP report, the Services filed a reply to RIAA's Petition to Reject the CARP Report (Reply to Petition). The crux of the Services' argument in support of adopting the Panel's report is that ''[w]hen examined as a whole, the Panel's Report is eminently reasonable and amply supported by the record.'' Reply to Petition at 12. Specific arguments of the Services in support of the Panel's report are discussed below in conjunction with RIAA's arguments to reject the report.

IV. The Librarian's Scope of Review of the Panel's Report

The Copyright Royalty Tribunal Reform Act of 1993 (the Reform Act), Public Law 103–198, 107 Stat. 2304, created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review that result in final orders: the Librarian of Congress (Librarian) and the United States Court of Appeals for the District of Columbia Circuit. Section 802(f) of title 17 directs the Librarian either to accept the decision of the CARP or to reject it. If the Librarian rejects it, he must substitute his own determination ''after full examination of the record created in the arbitration proceeding.'' 17 U.S.C. 802(f). If the Librarian accepts it, then the determination of the CARP becomes the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals. 17 U.S.C. 802(g).

The review process has been thoroughly discussed in prior recommendations of the Register of Copyrights (Register) concerning rate adjustments and royalty distribution proceedings. Nevertheless, the discussion merits repetition because of its importance in reviewing each CARP decision.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP ''unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title.'' Neither the Reform Act nor its legislative history indicates what is meant specifically by ''arbitrary,'' but there is no reason to conclude that the use of the term is any different from the ''arbitrary'' standard described in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A).

Review of the case law applying the APA ''arbitrary'' standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency action is generally considered to be arbitrary when:

1. It relies on factors that Congress did not intend it to consider;
2. It fails to consider entirely an important aspect of the problem that it was solving;
3. It offers an explanation for its decision that runs counter to the evidence presented before it;
4. It issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;
5. It fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and
6. Its action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Mfrs. Ass'n. State Farm Mutual Auto. Insurance Co., 463 U.S. 29 (1983);

Celcom Communications Corp. v. *FCC,* 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp.* v. *FAA,* 758 F.2d 685 (D.C. Cir. 1985).

Given these guidelines for determining when a determination is ''arbitrary,'' prior decisions of the District of Columbia Circuit reviewing the determinations of the former CRT have been consulted. The decisions of the Tribunal were reviewed under the ''arbitrary and capricious'' standard of 5 U.S.C. 706(2)(A) which, as noted above, appears to be applicable to the Librarian's review of the CARP's decision.

Review of judicial decisions regarding Tribunal actions reveals a consistent theme: while the Tribunal was granted a relatively wide ''zone of reasonableness,'' it was required to articulate clearly the rationale for its award of royalties to each claimant. See *National Ass'n of Broadcasters* v. *Copyright Royalty Tribunal,* 772 F.2d 922 (D.C. Cir. 1985), *cert. denied,* 475 U.S. 1035 (1986) (*NAB* v. *CRT*); *Christian Broadcasting Network* v. *Copyright Royalty Tribunal,* 720 F.2d 1295 (D.C. Cir. 1983) (*Christian Broadcasting* v. *CRT*); *National Cable Television Ass'n* v. *Copyright Royalty Tribunal,* 689 F.2d 1077 (D.C. Cir. 1982) (*NCTA* v. *CRT*); *Recording Indus. Ass'n of America* v. *Copyright Royalty Tribunal,* 662 F.2d 1 (D.C. Cir. 1981) (*RIAA* v. *CRT*). As the D.C. Circuit succinctly noted:

> We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully * * *.

Christian Broadcasting v. *CRT,* 720 F.2d at 1319 (D.C. Cir. 1983), quoting *NCTA* v. *CRT,* 689 F.2d at 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same ''arbitrary'' standard used by the courts to review the Tribunal, he must be presented by the CARP with a rational analysis of its decision, setting forth

specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history to the Reform Act which notes that a ''clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress.'' H.R. Rep. No. 103–286, at 13 (1993). This goal cannot be reached by ''attempt(ing) to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record.'' *Christian Broadcasting* v. *CRT*, 720 F.2d at 1319.

It is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination. 17 U.S.C. 802(f).

V. Review and Recommendation of the Register of Copyrights

The law gives the Register the responsibility to review the CARP report and make recommendations to the Librarian whether to adopt or reject the Panel's determination. In doing so, she reviews the Panel's report, the parties' post-panel motions, and the record evidence.

After carefully reviewing the Panel's report and the record in this proceeding, the Register finds that the Panel's adoption of the DCR negotiated license fee as the starting point for making its determination is arbitrary. This conclusion compels the Register to set aside the Panel's final determination and reevaluate the record evidence before making a recommendation to the Librarian.

Section 802(f) states that ''(i)f the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be.'' During that 60-day period, the Register reviewed the Panel's report and made a recommendation to the Librarian not to accept the Panel's report, for the reasons cited herein. The Librarian accepted this recommendation, and on January 27, 1998, issued an order stating that the Panel's report was still under review. See Order, Docket No. 96–5 CARP DSTRA (January 27, 1998).

The full review of the Register and her corresponding recommendations is presented herein. Within the limited scope of the Librarian's review of this proceeding, ''the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its decision runs completely counter to the evidence presented to it.'' Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55757 (1997), citing 61 FR 55663 (October 28, 1996) (Distribution of 1990, 1991 and 1992 Cable Royalties). Accordingly, the Register accepts the Panel's weighing of the evidence and will not question findings and conclusions which proceed directly from the arbitrators' consideration of factual evidence.

The Register also adopts the Panel's approach in setting reasonable rates and terms for the digital performance license in sound recordings pursuant to 17 U.S.C. 114(f)(2), but sets aside those findings and conclusions that are arbitrary or contrary to law.

a. Methodology for Making Rate Determination

Use of a Marketplace Standard in Setting the Royalty Rate

The standard for setting the royalty rate for the performance of a sound recording by a digital audio subscription service is not fair market value, although CARPs and the Copyright Royalty Tribunal (CRT or Tribunal) in prior rate adjustment proceedings under sections 115 and 116 considered comparable rates negotiated under marketplace conditions when making their determinations.

In light of this practice, the Panel followed the same approach established in prior rate adjustment proceedings conducted by the Tribunal and the CARPs in making its determination. Namely, the Panel considered the parties' presentations of different rates negotiated in comparable marketplace transactions and first determined whether the proposed models mirrored the potential market transactions which would take place to set rates for the digital performance of sound recordings. Report ¶ 123. These benchmarks were then evaluated in light of the statutory objectives to determine a reasonable royalty rate. *Id.*

The Panel noted that RIAA and the Services ''seem to agree that the best proxy for reasonable compensation is to look to marketplace rates.'' Report ¶ 124. The parties also agreed that the rates should be based on gross revenues and further agreed on the definition of ''gross revenues.'' Report ¶ 125; RIAA PF ¶ 55; Services Joint Reply to RIAA's Proposed Findings of Fact and Conclusions of Law (Services' RF) ¶ 51.

While the Panel agreed with the parties on these two points, it noted that the statute requires the Panel to adopt reasonable rates and terms, and that reasonable rates and terms are not synonymous with marketplace rates. Report ¶ 124. Unlike a marketplace rate which represents the negotiated price a willing buyer will pay a willing seller, *see* Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (1997) (applying a fair market standard, as set forth at 17 U.S.C. 119(c)(3)(D), in setting royalty rates for the retransmission of broadcast signals by satellite carriers), reasonable rates are determined based on policy considerations. *See RIAA* v. *CRT*, 662 F.2d 1.[6] Congress granted the record companies a limited performance right in sound recordings in order to ''provide [them] with the ability to control the distribution of their product by digital transmissions,'' but it did so with the understanding that the emergence of new technologies would not be hampered. S. Rep. No. 104–128, at 15 (1995). Consequently, Congress specified that the terms were to be reasonable and calculated to achieve the following four specific policy objectives:

1. To maximize the availability of creative works to the public;

2. To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

3. To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and

4. To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. 17 U.S.C. 114(f)(2) and 801(b)(1).

RIAA takes exception to this interpretation and argues that the Panel failed to follow CRT precedent that ''interpreted the Section 801(b)(1) factors as requiring it to establish a market rate.'' Petition at 33. In support of its position, RIAA relies upon the 1982 CRT rate adjustment proceeding to determine reasonable rates and terms for the statutory noncommercial broadcasting license, 17 U.S.C. 118, where the CRT stated:

> The Tribunal has consistently held that the Copyright Act does not contemplate the Tribunal establishing rates below the

[6] In reviewing how the Tribunal analyzed the statutory criteria, the court noted that ''other statutory criteria invite the Tribunal to exercise a legislative discretion in determining copyright policy in order to achieve an equitable division of music industry profits between the copyright owners and users.'' *Id.* at 8.

reasonable market value of the copyrighted works subject to a compulsory license.

1982 Adjustment of Royalty Schedule for Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting: Terms and Rates of Royalty Payments, 47 FR 57924 (December 29, 1982). RIAA further contends that the Panel not only ignored the CRT precedent requiring it to set marketplace rates, but improperly shifted the emphasis to ensure the financial viability of the copyright users. Petition at 33.

In response, the Services contend that the Panel's analysis comports with CRT precedent on both points, noting that the CRT did consider evidence on how a proposed rate would affect the user industry in its proceedings to set rates under sections 111 and 116. Reply to Petition at 26. For example, in the 1980 rate adjustment proceeding to set the royalty rate for jukeboxes, the CRT considered the evidence and found ''only that marginal jukebox owners would be threatened by the new rate.'' *Id*. In fact, the Tribunal stated that it was ''satisfied that adequate attention (had) been given to the small operator, * * * (and adopted) an amendment to the proposed fee schedule that was proposed for the benefit of such (small) operators.'' 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 888 (1981).

The Register finds that the Panel correctly analyzed how to determine a reasonable rate under section 114. Section 801(b)(1) states that one function of a CARP is to determine reasonable rates ''as provided in sections 114, 115, and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118.'' The provision further states that the CARP must determine the rates under sections 114, 115, and 116 to achieve the four statutory objectives. The law does not state that these objectives are applicable in a rate adjustment proceeding to determine rates under sections 111 or 118. Therefore, RIAA's reliance on CRT precedents for setting rates under section 118 is without merit. Furthermore, the Panel's analysis is consistent with the prior CRT determinations establishing rates for the section 115 and 116 licenses.

In the 1980 jukebox rate adjustment proceeding, the CRT set the rate ''[o]n the basis of the marketplace analogies presented during the proceeding, taking the record as a whole, and with regard for the statutory criteria. * * * That rate takes account both of what is paid for music elsewhere under similar circumstances and, since it is a flat rate, of the Tribunal's concern for the smaller, less profitable operators.'' 46 FR 889 (1981). To recognize that this rate was not a negotiated marketplace value, one need only read Commissioner James's dissent admonishing the majority for setting a rate on ''an ability to pay theory.'' He characterized the majority's actions as follows:

> In essence, the majority reached a conclusion on the premise that a true market value would result in too large an increase in fees. The majority was set on course by what they deemed were the guiding standards of the statute which referred to minimizing the disruptive impact on the economic structure of the industries involved. It was the majority view and opinion that a large increase in fees would be oppressive to the industry and would ''impact on small operators.''

Id. at 891 (footnote omitted).

The Court of Appeals upheld the Tribunal's approach in its 1980 jukebox rate adjustment proceeding, stating that:

> In its decision, the Tribunal acknowledged that the rate which it approved could not be directly linked to marketplace parallels, but it found that such parallels served as appropriate points of reference to be weighed together with the entire record and the statutory criteria. Although we agree with ASCAP that the analogous marketplace evidence is significant, we do not believe that the Tribunal was bound by that evidence to select a fee rate within the $70–$140 ''zone'' which, according to ASCAP, governs this case. The Tribunal carefully weighed the evidence derived from the marketplace analogies and other evidence specifically in light of the four statutory criteria of section 801(b) and arrived at a royalty rate for coin-operated phonorecord players of $50 per machine.

Amusement and Music Operators Ass'n v. *Copyright Royalty Tribunal*, 676 F.2d 1144, 1157 (7th Cir. 1982), *cert. denied*, 459 U.S. 907 (1982) (*AMOA* v. *CRT*). The D.C. Court of Appeals engaged in a similar analysis when it considered the Tribunal's determination to raise the royalty rate for making and distributing phonorecords of copyrighted musical works from 2 cents to 4 cents. In that case, the copyright owners argued that Congress intended the Tribunal to set a high royalty rate under a bargaining room theory, which would create a rate ceiling for stimulating future negotiations outside the license. The D.C. Circuit found that while Congress had considered this possibility, it chose not to codify this approach, but rather to express its will through specific statutory criteria and allow the Tribunal to interpret and apply these objectives to the record evidence in a rate adjustment proceeding. *RIAA* v. *CRT*, 662 F.2d at 8–9. Furthermore, the Court ascertained that Congress did not rank the criteria in order of importance so that the Tribunal, and subsequently, the CARP, could:

> To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, * * * choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a ''zone of reasonableness.''

Id. at 9. *See also Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968); *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 585–586 (1942); *Hercules, Inc.* v. *Environmental Protection Agency*, 598 F.2d 91, 107 (D.C. Cir. 1978).

b. Benchmarks

The Panel's Disposition of the Proposed Benchmarks

The Register has reviewed the analysis of the Panel and its disposition of the three benchmarks and finds that the Panel's primary reliance on and manipulation of the DCR negotiated license fee was arbitrary. The Register also finds that the record evidence does not support the Panel's calculation of a specific range of fees for the public performance of the musical compositions. These flaws compel the Register to reexamine the record evidence and propose a rate based on her analysis while providing deference, where appropriate, to the findings of the Panel.

The Register, however, did not evaluate further the record evidence concerning either the cable television network fee or the proposed minimum fee in her deliberations to determine the appropriate rate because no party to the proceeding challenged either of these findings or continued to rely upon these matters in presenting its arguments to the Librarian.[7] Therefore, the Register forgoes a review of the Panel's analysis in these areas. This does not mean, however, that the Register and the Librarian will always forego an independent review of a Panel's actions. See, *e.g.* Distribution of the 1992, 1993, and 1994 Musical Works Funds, 62 FR 6558 (February 12, 1997)

[7] ''RIAA strongly disagrees with the CARP's conclusion that the Services should devote a smaller percentage of their revenues to license fees than do other cable networks. While the range of percentages is large, there are no cable networks that consistently spend as little as 5 percent. Nevertheless, RIAA has not challenged the CARP's decision to reject the cable network analogy.'' Petition at 52 n.9 (citations omitted). Furthermore, RIAA did not raise any challenge to the Panel's decision not to grant a minimum fee.

(recommending an upward adjustment to one party's award, although no party made a request for the adjustment); Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (1997) (recommending the adoption of a zero rate for local retransmission of network signals to unserved households).

The Panel's Adoption of the DCR Negotiated License Fee and its Subsequent Manipulations of This Rate to Establish a Range of Potential Royalty Rates was Arbitrary [8]

The Panel found that the digital performance license negotiated as part of a larger partnership agreement between DCR and its two record company partners, Warner Music and Sony Music, was a useful benchmark for determining the section 114 royalty fee because it provided a ''useful precedent,'' although there were problems with using the rate for this license fee since only 60% of the industry engaged in the negotiations setting the rate.[9] Report ¶¶ 166, 200. To address this problem the panel adjusted the figure upward to reach a base rate figure arguably applicable to 100% of the recording industry market. *Id.* The Panel then doubled this number to account for the statutory provision which requires an equal distribution of the royalties collected pursuant to the compulsory license between the record companies and the recording artists. *Id.; also* 17 U.S.C. 114(g). While recognizing that a pure doubling of the base rate was inappropriate, the Panel determined that these manipulations of a ''freely negotiated rate'' set a reasonable range of rates for further consideration in light of the statutory criteria. *Id.*

RIAA opposes the use of the negotiated license fee as a benchmark for setting the compulsory license fee for the following reasons: (1) It was merely one provision in a complex transaction involving eleven interrelated agreements, RIAA PF ¶ 92; Petition at 22; Wildman [10] W.R.T. at 12–15; Transcript (Tr.) 2213–14 (Wildman); (2) the record companies interested in investing in the digital audio service would share the cost of a higher rate, thereby creating a strong incentive to create a low rate; (3) the license fee was not for the right to perform sound recordings publicly, but for the acknowledgement that a right should exist, RIAA PF ¶ 84; Tr. 2102 (Vidich); [11] (4) the record companies never viewed the established rate as precedential, citing the license provision that the rate will be superseded if Congress establishes a performance right in sound recordings, DCR Exs. 7, 8 & 15 at ¶ 9; Vidich W.R.T. at 7; Tr. 2106–2107 (Vidich); Del Beccaro [12] W.D.T. at 9, and the most favored nations clause, DCR Exs. 7, 8 & 15 at ¶ 6; (5) the record companies did not enjoy the degree of leverage in setting the rate that the Services imply in their proposed findings; (6) the fee did not represent an industry-wide agreement on the value of the performance right; instead, only three record companies, ''collectively responsible for only about 35% of the sound recordings performed by DCR,'' negotiated the rates, RIAA's Reply to Proposed Findings and Conclusions of Law (RIAA RPF)] 39; Tr. 1014 (McCarthy); [13] and (7) the DCR digital performance license differed in significant ways from the statutory license. For example, the DCR license requires the company to pay royalties on its revenues from international sources which are not recoverable under the DPRSRA, RIAA PF ¶ 83; Tr. 965 (Del Beccaro); Tr. 1014 (McCarthy); Tr. 2137 (Vidich), and it did not contemplate a distribution of a portion of the royalties to recording artists as required under the new law, RIAA PF ¶ 82.

In response, the Services assert that the Panel ''did not rely on the DCR license rate in isolation,'' and argue that its determination was informed by testimony from the parties who participated in the negotiations. Reply to Petition at 20. More specifically, the Services argue that the inclusion of the performance license within a larger, complex commercial agreement makes it more meaningful, because DCR did not purchase a license for the public performance of sound recordings. Rather, in exchange for a partnership agreement, DCR acknowledged that the right should exist for a particular rate. The Services neglect, however, to discuss why this observation is important in their initial findings. Services RF ¶ 75–77. Later, the Services argue that the Panel's decision to use the DCR license fee as an appropriate benchmark rested on a weighing of the evidence and invoke the Panel's discretion to evaluate the testimony and fashion its decision accordingly. Reply to Petition at 20–21. The Services, however, fail to address RIAA's additional concerns about the negotiated license, except to note that the partner record companies never operated a joint advertising venture nor took advantage of the provisions which gave them some measure of control over programming. Services RF ¶¶ 80–81.

While the Register agrees with the Services that the Panel carefully considered the rationale for and the circumstances surrounding the negotiations setting the DCR license rate, she finds the Panel's adoption of this benchmark and its subsequent adjustments arbitrary. In the first instance, the benchmark offered by the Services cannot represent a license for a right to perform sound recordings, because no such legal right existed at the time of the negotiations. Woodbury [14] W.D.T. at 12; RIAA PF] 84; Tr. 2102 (Vidich). DCR allowed that, in fact, it did not negotiate for a performance license in sound recordings; and instead, characterized the transaction as selling ''to its record company partners the recognition they sought 'that the right existed for a particular rate.' '' Services PF ¶ 102. To underscore this distinction, DCR insisted on a clause which stated that the United States law did not require DCR to pay a fee or royalty for the public performance of any sound recording, even though DCR agreed, as part of a complex commercial transaction, to pay its partner record companies what it calls a public performance license fee. Services PF ¶¶ 111, 136. An article in the press announcing the deal echoed this distinction. It noted that not only did the transaction allow DCR use of the record companies' repertoire, it also required DCR to support a performance right in sound recordings. DCR Ex. 27 (Paul Verna, *Time Warner Breaks New Cable Ground; Enters Cable Radio Venture With Sony,* Billboard, Feb. 6, 1996, at 1).

Consequently, the Register rejects the Panel's premise that the rate set for a nonexistent right would represent accurately the value of the performance right once it came into existence, especially where the parties

[8] Negotiated license fees and certain business information, which the Register has considered throughout her review, are not being published in the Register's review because the information is subject to a protective order. See Order Docket No. 96–5 CARP DSTRA (September 18, 1996).

[9] Sony Music and Warner Music signed a partnership agreement with DCR in January 1993. A third record company, EMI, joined the partnership in April 1994, under substantially the same terms. Report ¶ 164.

[10] Associate Professor of Communications Studies at Northwestern University and Director of Northwestern's program in Telecommunications Studies, Management, and Policy.

[11] Senior Vice-President of Strategic Planning and Business Development at Warner Music Group and a member of the Board of Directors of Digital Cable Radio Associates.

[12] President and Chief Executive Officer of Digital Cable Radio Associates.

[13] Senior Vice-President and Chief Financial Officer of Digital Cable Radio Associates.

[14] A vice-president at the economic consulting firm of Charles River Associates, Inc.

acknowledge that the agreement encompassed more than the purported value of the coveted right, namely the recognition from the audio service that a performance right in sound recordings should exist. RIAA PF ¶¶ 94–95; Tr. 2209–12 (Wildman); Wildman W.R.T. at 9–12. Arguably, that recognition was more valuable consideration to the record companies than the license fee itself.

The conclusion that the DCR license fee may serve as the benchmark for setting the section 114 rates is undermined further by the very nature of the partnership agreement. All parties agree that the agreement concerning the performance right was merely one of eleven interdependent co-equal agreements which together constituted the partnership agreement between DCR and the record companies. Such strong ties between provisions in a negotiated document raise the question of how much give-and-take occurred in negotiating the final terms. Courts recognize that complex transactions encourage tradeoffs among the various provisions and lead to results that most likely differ from those that would result from a separately negotiated transaction.[15] While DCR freely entered into the partnership agreement, the record contains no evidence that it would have freely entered into a separate performance license for sound recordings. To the contrary, the Service's own witness admits that it is unlikely that a stand-alone performance license would have been negotiated. Woodbury W.D.T. at 15. Accordingly, the Register concludes that it was arbitrary for the Panel to rely on a single provision extracted from a complex agreement where the evidence demonstrates that the provision would not exist but for the entire agreement. Under similar circumstances, the Southern District Court of New York found that ''plucking one term out of the contract is likely to yield a fairly arbitrary result.'' *American Society of Composers Authors and Publishers* v. *Showtime/The Movie Channel, Inc. (ASCAP)*, published at 912 F.2d 572, 590 (S.D.N.Y. December 20, 1989) (No. 13–95 (WCC)) (rejecting proposal to rely upon provisions in guild agreement concerning payment of revenues where such provisions were part of a set of terms governing compensation, benefits, and working conditions).[16]

Another problem with adopting the DCR license fee is that it is not an industry-wide agreement, but rather the product of negotiations among only three record companies, which together account for approximately 35% of the sound recordings performed by DCR. RIAA PF ¶ 82; RIAA RPF ¶ 39. The arbitrators understood the limited nature of the negotiations and made an adjustment to the license fee based on the mistaken assumption that the DCR license fee represented the value of the sound recordings owned by the three record companies party to the agreement, which purportedly represented 60% of the record industry. Report ¶¶ 166, 200. This assumption arose from a statement made by the Services in the summary statement contained in the Services' joint reply to RIAA's proposed findings.[17] The statement, however, has no support in the record. See Petition at 21 n.3; Reply to Petition at 21–22. Consequently, the Panel's upward adjustment of the base figure on the merits of this assertion was arbitrary.

This is not to say that the fact that the DCR license fee was negotiated with companies owning rights to only 35% of the relevant works renders that license fee irrelevant. It is, however, a further deficiency which in combination with the other deficiencies discussed herein, renders the Panel's reliance on the DCR license fee as its exclusive benchmark inappropriate.

Furthermore, the Panel's decision to rely on the DCR license fee deviates from CRT precedent where that agency refused to adopt, as an industry-wide rate, a set of rates negotiated by only certain of the affected parties as part of a general understanding involving issues in addition to the rate of compensation. Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting, 43 FR 25068 (June 8, 1978). While no Panel need slavishly adhere to the past practices of the CRT, it must articulate a reasoned explanation for its deviation from past precedent. Distribution of 1990, 1991, and 1992 Cable Royalties, 61 FR 55653, 55659 (October 28, 1996). Otherwise, its actions may be construed as arbitrary or contrary to law.[18]

The Register also finds that even if the 60% figure had record support, it would be arbitrary to adjust a negotiated license fee that purports to represent the market value of the digital performance right in sound recordings. Under the license agreement, DCR agreed to pay a percentage of its gross revenues for the right to perform sound recordings digitally, but only a portion of these fees were paid to each of DCR's three record company partners, allocated on the basis of the DCR playlist.[19] Tr. 2123–24 (Vidich); Services PF ¶ 111. Therefore, the license fee—to the extent that it was a license fee—already accounted for all copyright fees owed to the record industry, and it was inappropriate for the Panel to make any further adjustment. The Services seem to realize the Panel's error in this respect and note that the Panel was under no obligation to make an upward adjustment, since the license fee reflected the value of the sound recording and not the sum of the percentage amount each partner record company negotiated for use of its works. Reply to Petition at 22.

Furthermore, the Register finds that the Panel's conclusion that the DCR license fee ''provides a useful precedent for setting a royalty rate in this proceeding'' was arbitrary. Report ¶ 200. The only support for this finding was Woodbury's testimony that the trade article announcing the deal between DCR and its new record company partners, Sony and Warner, illustrated its precedential value, at least for the record companies. Woodbury W.D.T. at

[15] For example, in resolving a dispute between ASCAP and Showtime/The Movie Channel, Inc. over the fee for a ''blanket'' license, the Southern District Court of New York stated that:

> it is fair to assume that in any negotiation that encompasses as many disparate issues as do the guild agreements, the negotiators will agree to tradeoffs, among the various negotiated items, ... The process of negotiation is thus likely to yield a complex pattern of results, most of which would have been different if the individual issue had been negotiated entirely separately from the others. Accordingly, plucking one term out of the contract is likely to yield a fairly arbitrary result.

ASCAP v. *Showtime/The Movie Channel, Inc.*, published at 912 F.2d 572, 590 (S.D.N.Y. Dec. 20, 1989) (Civ. No. 13–95 (WCC) (footnote omitted).

[16] This is not to say that in any case in which a CARP relied on a license fee that was part of a larger agreement containing a number of provisions unrelated to the license fee, such reliance would necessarily be arbitrary. But in light of the other deficiencies in the CARP's reliance on the DCR license, discussed herein, and especially in light of the fact that the license fee was for the exercise of a nonexistent right, the Register is compelled to conclude that in this case, the CARP's reliance on the DCR license fee as its exclusive benchmark was arbitrary.

[17] ''DCR entered into a performance license with three record companies that represent approximately 60% of all recorded music sold in the United States.'' Services RF at 2.

[18] Section 802(c), of the Copyright Act, directs the CARP to ''act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c).''

[19] For example, if the DCR license fee had been 5% of gross receipts (equaling $100,000) and 40% of the sound recordings on DCR's playlist were owned by DCR's record company partners, then DCR would pay 40% of the license fees ($40,000) on a prorata basis to these partners. The remaining 60% ($60,000) represents the value of the digital performance of works owned by non-partnership record companies performed during the relevant time period—a sum that DCR would not actually pay under the terms of its license agreement.

The 5% license fee value does not represent the actual value of the negotiated fee because this information is subject to a protective order. *See* n.8 *supra*.

16. Mr. Woodbury's statements on the precedential value of the agreement, however, are full of qualifications, and he readily acknowledged that ''a successful negotiation may have required that Warner and Sony compensate Music Choice for including the performance rights payments as part of the partnership agreement. The effect of this compensation may have restrained Warner and Sony in their choice of a higher fee level.'' *Id.*

In addition, the partnership agreement itself fails to support the Panel's finding. It includes material redacted subject to the protective order, DCR Exs. 7, 8 & 15 at ¶ 6, and a provision that the rate will be superseded if Congress establishes a performance right in sound recordings. DCR Exs. 7, 8, & 15 at ¶ 9. Vidich W.R.T. at 7; Tr. 2106–2107 (Vidich); Del Beccaro W.D.T. at 9. Because the partnership agreement included language that undermined any precedential value of the digital performance license included therein, the Register finds that the Panel's reliance on the DCR license fee as precedent was an arbitrary action. *See Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Insurance Co.,* 463 U.S. 29 (1983) (agency action is arbitrary where the agency offers an explanation for its decision that runs counter to the record evidence).

In setting a range of possible rates for the section 114 license, the Panel made further adjustments to the base figure to account for the payments to the recording artists. Under the DPRSRA, recording artists are entitled to half of the royalties collected under the compulsory license. 17 U.S.C. 114(g). RIAA argues that the DCR license fee must be adjusted to account for this provision in the law that entitles recording artists to a share of the royalties, because the record companies were under no obligation to share the royalties. RIAA RPF ¶ 40; Petition at 28. RIAA also argued for additional upward adjustments of the benchmark to compensate the record companies for certain differences between the DCR license and the compulsory license, including compensation for loss of royalties generated from foreign and commercial subscribers, and loss of revenue due to a shift in how the Services offer their product to subscribers.

RIAA anchors its arguments for these requested adjustments on the presumption that the responsibility of the Panel was ''to determine the royalty [rate] that would be produced through free market negotiations, absent the compulsory license.'' RIAA RPF ¶ 41. This presumption, however, misrepresents the Panel's duty, which is to establish reasonable rates and terms. See discussion *supra* concerning the use of a marketplace standard in setting the royalty rate. While RIAA may have a reasonable expectation that a Panel would make appropriate adjustments to a marketplace benchmark that the Panel adopts for further consideration in light of the statutory objectives, and that is not to say that the requested adjustments are appropriate, there is no justification for making the adjustments where the benchmark value does not fulfill that function. Therefore, having found that the DCR license fee does not represent the marketplace value of sound recordings, the Register need not consider further arguments on adjusting the rate.

For the reasons cited above, the Register finds that the Panel was arbitrary in relying on the DCR license fee for the purpose of establishing an accurate evaluation of the marketplace value for the performance right.

The Panel's Determination of a Specific Range of Fees for the Public Performance of the Musical Compositions Was Arbitrary

The Services pay separate license fees to Broadcast Music, Inc. (BMI), the American Society of Composers, Authors, and Publishers (ASCAP), and SESAC, Inc. for the public performance of the underlying musical works in the sound recordings. The Services introduced evidence on what they pay the performing rights organizations for the public performance of the musical works to illustrate the industry practice that ''licensing rates ordinarily paid in the recording and music industries for the use of copyrighted works are far less than 41.5%, and generally are within the low single digit range for use of copyrighted music and sound recordings.'' Rosenthal [20] W.R.T. at 3; Tr. 1646, 1669–70, 1674 (Massarsky).[21]

Using the license fees DMX and DCR [22] pay for the right to perform musical compositions in the BMI and SESAC repertories and the anticipated payments that ASCAP will receive upon resolution of a rate dispute between itself and the Services, and not the interim rates that the Services currently pay ASCAP, which are usually lower than the final determination of the rate court, the Panel set an upper limit on the value of the performance right for the musical compositions. Report ¶¶ 167(B)–(G). In making this determination, the Panel accepted Massarsky's testimony that ASCAP license fees are ''generally greater than, but at least no less than, BMI license fees,'' and made its calculations accordingly. Report ¶ 167(E); see also RIAA PF ¶¶ 106–108.[23] In addition to setting an upper limit on the amount the Services would pay for these performance licenses, the Panel announced a lower limit for this benchmark but provided no discussion on how it arrived at this figure.

RIAA accepts the Panel's determination for an upper limit valuation for the performance right in musical works, but challenges the Panel's determination of the lower limit of this value. Petition at 16–20. RIAA contends that because the Panel had actual figures upon which to base its calculation, it was arbitrary to set a lower limit. *Id.* at 17.

From an examination of the record, the Register cannot determine how the Panel derived the lower limit figure, but she has identified at least one way that the Panel could have settled upon the lower figure. It entails the use of the interim rates which the Services pay ASCAP currently, instead of relying on a figure equal to or greater than the rate paid to BMI. Tr. 1669 (Massarsky), Tr. 1028–1029 (McCarthy). Use of such an approach, however, is expressly

[20] An attorney with the law firm of Berliner, Corcoran & Rowe, L.L.P., in Washington, D.C., who represents recording artists, writers, production companies, record companies, and multimedia companies.

[21] An economic consultant with the firm of Barry M. Massarsky Consulting, Inc.

[22] The Services pay an interim rate set in 1989 to ASCAP for the performance of the musical works in its repertoire. Tr. 1029 (McCarthy); Tr. 1656 (Massarsky). DCR also pays an interim rate to BMI. These rate disputes are currently the subject of adjudication before the ''rate court'' in the Southern District of New York. Services RF ¶¶ 52–53; 100–105. Pending the outcome of the rate cases, DCR has agreed to pay BMI the same contractual rate that DMX pays for the musical works performance license. Tr. 1653 (Massarsky).

[23] CRT and judicial precedent supports the Panel's premise that ASCAP usually receives slightly higher royalty fees for the public performance of its works than does BMI. In *American Society of Composers, Authors, and Publishers* v. *Showtime/The Movie Channel,* 912 F.2d 563 (2nd Cir. 1990), the court affirmed the rate court decision that a ''blanket'' license rate for use of ASCAP works should be set slightly higher than the rate the cable network pays for a BMI license. This result reflected the agreed upon 55–45 ratio that ASCAP and BMI adopted in dividing their share of the royalties for compulsory licenses paid by cable system operators for retransmissions of broadcast signals. See also 1978 Cable Royalty Distribution Determination, 45 FR 63026 (Sept. 23, 1980) (CRT determined that of the 4.5% royalty share awarded to the music claimants' group in the 1978 cable distribution proceeding, ASCAP would receive 54%, BMI, 43%, and SESAC, 3% of the royalties.); 1987 Cable Royalty Distribution Proceeding, 55 FR 11988 (March 30, 1990) (CRT again adjusted the distribution percentages for cable royalties so that ASCAP received a 58% share of the disputed royalties and BMI received the remaining 42% share).

disavowed by two of the Services' own expert witnesses who agree that it is inappropriate to rely on interim rates to determine competitive market rates. Woodbury W.R.T. at 19 n.70; Tr. 2710–2711 (Woodbury); Tr. 1029 (McCarthy). The Register concurs with these witnesses's assertions, and therefore rejects any figure which uses an interim rate in calculating a value when specific evidence exists in the record discounting this methodology and nothing supports its use.

Nor could the Panel consider just the individual license fees which the Services pay to a single performing rights organization in setting the lower limit, having rejected a similar argument when the Services initially proposed making this comparison. Report ¶ 168. A single license fee covers only those musical works under the control of the individual performing rights organization granting the license. Therefore, a Service must obtain a ''blanket'' license from every performing rights organization in order to have the freedom to play virtually any musical composition without infringing its copyright. Hence, the total value attached to the performance of the underlying musical works would be the sum of the license fees paid to each of the performing rights organizations, just as the value of the digital performance right in sound recordings would be the fees paid to all record companies. See Report ¶ 168.

The Register perceives no rational connection between the Panel's factual conclusions and its decision to set a lower limit for this benchmark. Where the record provides clear evidence of what the Services actually pay for the performance licenses, and the witnesses agree that the interim rates which are currently being paid represent *de minimis* value for these licenses, the Panel need not look beyond this information to determine the value of the benchmark. For the reasons discussed above, the Register does not consider the Panel's lower limit on the performance license fees for musical compositions when proposing a royalty rate for the section 114 license.

Use of Benchmarks Approximating Marketplace Value in Setting the Section 114 Rate

A benchmark is a marketplace point of reference, and as such, it need not be perfect in order to be considered in a rate setting proceeding. In the 1980 rate adjustment proceeding for coin-operated phonorecord players, the Tribunal considered different marketplace models and found that each analogy had distinguishing characteristics, but nevertheless considered them in conjunction with the record evidence and the statutory objectives. 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884, 888 (1981) (''While acknowledging that our rate cannot be directly linked to marketplace parallels, we find that they serve as an appropriate benchmark to be weighed together with the entire record and the statutory criteria''). The U.S. Court of Appeals for the Seventh Circuit approved the Tribunal's approach, stating that:

> We think that the Tribunal could properly take cognizance of the marketplace analogies while appraising them to reflect the differences in both the respective markets (*e.g.*, with respect to volume and industry structure) and the regulatory environment. It is quite appropriate and normal in this administrative rate determination process to find distinguishing features among various analogous situations affecting the weight and appropriate thrust of evidence rather than its admissibility. No authority cited by AMOA would require the Tribunal to reject the ASCAP/SESAC analogies. Comparable rate analogies have been repeatedly endorsed as appropriate ratemaking devices.

AMOA v. *CRT*, 676 F.2d at 1157. See also *San Antonio* v. *United States*, 631 F.2d 831, 836–37 (D.C. Cir. 1980), *clarified*, 655 F.2d 1341 (D.C. Cir. 1981); *Burlington Northern, Inc.* v. *United States*, 555 F.2d 637, 641–43 (8th Cir. 1977).

When setting the rates for the statutory performance license in sound recordings, the benchmarks are merely the starting point for establishing an appropriate rate. The deciding body uses the appropriate marketplace analogies,[24] in conjunction with record evidence, and with regard for the statutory criteria, to set a reasonable rate.

In this proceeding, the Register finds that both the negotiated DCR license fee and the marketplace license fee for the performance of the musical works are useful at least in circumscribing the possible range of values under consideration for the statutory performance license in sound recordings. While the DCR license fee purports to represent a negotiated value for a right to which, by law, the record companies were not entitled (in addition to the recognition that the right should exist), the Register acknowledges that the value of the DCR license provides minimal information as to the value of the performance right ultimately granted in the DPRSRA, although it does provide some guidance for assessing the proposed rate. See Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords; Rates and Adjustment of Rates (115 Rate Adjustment Proceeding), 46 FR 10466, 10483 (Feb. 3, 1981) (''We find that the foreign experience is relevant—because it provides one measure of whether copyright owners in the United States are being afforded a fair return'').

On the other hand, the second reference point—the negotiated license fees for the performance of music embodied in the sound recordings—offers specific information on what the Services actually pay for the already-established performance right of one component of the sound recording. The Panel recognized this reference point's usefulness and used it to further support its choice of a royalty rate. Report ¶ 201. The question, however, is whether this reference point is determinative of the marketplace value of the performance right in sound recordings; and, as the Panel determined, the answer is no. Report ¶¶ 169, 201.

Initially, neither the Services nor RIAA placed much weight on this marketplace reference point, although RIAA has consistently argued that the value of the performance right in sound recordings is greater than the value of the performance right in the underlying musical works. RIAA RPF ¶ 16, Petition at 10–16. On the one hand, the Services argue that the musical composition is the key to a successful recording, Services RF ¶ 10–12, citing Tr. 1664 (Massarsky), and on the other hand, RIAA contends that a song lacks feeling until the recording artist breathes life into the song. Morris[25] W.D.T. at 1–2; Petition at 12–13. Because neither side presented conclusive evidence on this point, the Panel observed only that both groups are ''parents of the music.'' Report ¶ 169.

RIAA faults the Panel for its lack of discussion on the question of whose rights in the phonorecord are more valuable. Petition at 10–16. While the Register agrees that the Panel did not make specific citations to record evidence, its finding that ''[t]here was insufficient and conflicting evidence to make a determination that the

[24] A Panel is free to reject a proposed benchmark that does not reflect accurately the characteristics and dynamics of the industries subject to the proposed rate. *See e.g.*, Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting, 43 FR 25068–69 (1978) (CRT found voluntary license between BMI, Inc. and the public broadcasters, Public Broadcasting System and National Public Radio, of no assistance in setting rate for use of ASCAP repertoire); Adjustment of the Royalty Rate for Cable Systems; Federal Communications Commission's Deregulation of the Cable Industry, 47 FR 52146 (November 12, 1982).

[25] A country music artist who has recorded 14 albums, including five number one songs.

performers and record companies deserve a larger percentage from the Services than granted to the music works,'' was supported by the record evidence. Report ¶ 169.

To make its point, RIAA presented an analysis of revenues from record sales in support of its argument that the marketplace values the contributions of the record companies and the performing artists more than it values the contributions of the copyright owners in the musical compositions. RIAA's PF ¶¶ 112–120; Petition at 10–16. This evidence showed that copyright owners of the musical composition receive between 5–20% of the wholesale price for the sound recordings based on sales of CDs and cassette tapes—approximately 5% from the average wholesale price for an average CD and 12% from an average cassette.[26] RIAA PF ¶¶ 115, 119. Recording artists, on the other hand, receive 7–10% of the average wholesale price for a typical CD and 15–20% for a typical cassette, leaving approximately between 56–88% of the revenues from sales for the record companies. RIAA ¶ PF 116.

The Services disagreed with RIAA's interpretation of the marketplace data, contending that the reason the ''(r)ecord companies receive a bigger percentage of revenues from the sale of sound recordings (is) because they have a bigger monetary investment in the record production costs, as well as the leverage to minimize the royalties paid to songwriters, music publishers, and recording artists.'' Services RF ¶¶ 118–120. They also oppose RIAA's implication that the record companies should receive more value from the performance right in sound recordings than the songwriters receive for a similar right because the record companies garner more revenue from the use of the mechanical license than do the songwriters and composers.

The Services accurately note that the mechanical license and the digital performance license represent different and distinct rights to the copyright holders under the law, and they make no attempt to tie the value of the rights associated with the mechanical license to the value of the digital performance right, a right newly recognized with the passage of the DPRSRA. Even RIAA, the proponent of the assertion, fails to explain why the relative value of the mechanical license to the various owners and users has any application to the determination of the value of a digital performance license in sound recordings. Consequently, where no clear nexus exists between the values of different rights, the model serves no practical purpose in computing the value of the digital performance right.

Hence, RIAA's contention that the data supports its assertion that the marketplace places a higher value on the contributions of the record companies and the recording artists in the creation of the phonorecord fails, because it does not discuss the constraining effect the mechanical license has on the copyright owners in setting a value on their reproduction and distribution right. Record companies pay the copyright owners of the musical compositions no more than the statutory rate for the right to reproduce and distribute the musical composition in a phonorecord. The record company then, in turn, sells the phonorecord at a fair market price. Because both groups do not share equal power to set rates in an unfettered marketplace, it is unreasonable to compare the value of the reproduction and distribution right of musical compositions—a rate set by the government at a level to achieve certain statutory goals—with the revenues flowing to record companies from a price set in the marketplace according to the laws of supply and demand, and then to declare that the marketplace values the sound recording more than the underlying musical composition. Consequently, RIAA's evidence sheds no light on the relative value of the sound recording performance right and the musical works performance right.[27]

In addition to the foregoing discussion, the Register notes that Congress did not intend for the license fees paid under the new digital performance license to ''*diminish* in any respect the royalties payable to copyright owners of musical works for the public performance of their works.'' S. Rep. No. 104–128, at 33 (1995) (emphasis added). See also 17 U.S.C. 114(i). Although this statement does not express Congress' intent that the license be set below the value of the public performance right in the musical works, it indicates that Congress considered the possibility that such would be the outcome, and sought through express legislation to protect the current value of the performance right in musical works.

Based on a review of the record evidence, the Register concurs with the Panel's conclusion that there was insufficient evidence to determine that the performers and record companies deserve a larger percentage from the Services than that received by the copyright holders in the musical works. That being so, the Register finds no basis for making an upward adjustment to the musical works performance license fees to establish a broader range of potential rates.

c. Statutory Objectives

Section 801(b)(1) of the Copyright Act states that the rates for the section 114 license shall be calculated to achieve certain statutory objectives. The Panel evaluated each statutory objective and made a finding as to whether the Services or RIAA furthered that objective. If the Services contributed more to furthering the objective, the Panel gave more consideration to setting a rate at the lower end of the possible range, and conversely, if the record companies made the more significant contribution, the Panel found this to favor a rate toward the upper end. Report ¶ 19((A)–(D).

The Panel's analysis led it to set a rate toward the low end of its range, because a rate set toward the high end would thwart the statutory objectives under current market conditions. *Id.* The Panel expressly noted that a future Panel may reach an entirely different result based on the then-current economic state of the industry and new information on the Services' impact on the marketplace. Report ¶ 202.

RIAA contends that the Panel's findings that all factors favor setting a low rate is contrary to CRT precedent. Petition at 32. This contention relies on a statement from the D.C. Court of Appeals, which upon reviewing the CRT's 1980 Mechanical Rate Adjustment Proceeding concluded that the factors ''pull in opposing directions.'' *Id.*, citing *RIAA* v. *CRT*, 662 F.2d at 9. But in making this statement, the court merely made an observation that the statutory objectives required the Tribunal to weigh opposing factors in determining how best to achieve each objective. It went on to say that the Tribunal had the responsibility of reconciling these factors in setting a reasonable rate, but the court did not preclude the possibility that the Tribunal might find that the application of the factors to the evidence consistently supported either a high rate or a low rate. *RIAA* v. *CRT*, 662 F.2d at 9.

[26] Interested parties are free to negotiate a rate below the statutory rate for the mechanical license and often do. Tr. 1660 (Massarsky).

[27] Even if there was some value to the comparison, RIAA does not appear to factor into its calculations the value of the sound recordings in those phonorecords that do not show a profit. According to the record, ''approximately 85 percent of all sound recordings do not recoup the costs that are spent to make and to market those recordings. Indeed, over two-thirds of all sound recordings sell less than 1,000 copies.'' Report ¶ 105.

The Register approves the Panel's basic approach in utilizing the factors to determine its rate for the digital performance right and adopts the Panel's findings where the evidence supports its conclusions.

The Panel's determination that the statutory objectives supported setting a rate favoring the Services was not arbitrary

The Panel's ultimate conclusion that the best way to achieve the four statutory objectives was to set a low rate favoring the Services is supported by the evidence presented in this proceeding. How much weight to accord each objective is within the discretion of the Panel, which may accord more weight to one objective over the others so long as all objectives are served adequately. See *RIAA* v. *CRT*, 662 F.2d at 9. In *RIAA* v. *CRT*, the court reviewed the Tribunal's decision to raise the rate for making and distributing phonorecords from two cents to four cents. It found the copyright users' argument that the Tribunal failed to give adequate consideration to certain factors over others unavailing. In discussing the impact of the statutory objectives on the ratemaking process, the court stated:

> (T)he Tribunal was not told which factors should receive higher priorities. To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a ''zone of reasonableness.''

Id. at 9 (citations omitted). Hence, the Panel was free to find that a rate on the low end was reasonable so long as that rate fell within the ''zone,'' and the ''zone'' was calculated to achieve the statutory objectives.

The Panel's analysis and application of the statutory objectives, however, are not without problems. The Register finds that on occasion, the Panel either did not perceive or misinterpreted the precedential underpinnings of the statutory objective.

A full discussion of the Panel's deliberations and the parties' responses concerning the evaluation and application of the four statutory objectives follows.

A. Maximize the Availability of Works. (17 U.S.C.801(b)(1)(A)).

The Panel found that the digital audio services ''substantially increase the availability of recordings by providing many channels of uninterrupted music of different genres,'' noting the diversity of the music offered by the Services. Report ¶¶ 121–122. Based on this finding, the Panel concluded at the end of its report that ''[t]o maximize the availability of creative works to the public * * * the rate should be set on the low side. A lower rate will hopefully ensure the Services' continued existence and encourage competition so that the greatest number of recordings will be exposed to the consumers.'' *Id.* ¶ 198(A).

RIAA alleges that the Panel misinterpreted this statutory objective because it focused on ''whether the Services promote the sale of sound recordings,'' rather than ''whether the proposed rate will maximize the availability of sound recordings.'' RIAA RPF ¶ 43; Petition at 37–41. In support of its position, RIAA recalls the 1980 jukebox rate adjustment proceeding, where the CRT concluded, in its discussion of section 801(b)(1)(A), that jukeboxes were not crucial to assuring the public of the availability of creative works. 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884, 889 (1981). The Tribunal, however, did find that ''reasonable payment for jukebox performances will add incrementally to the encouragement of creation by songwriters and exploitation by music publishers, and so maximize availability of musical works to the public.'' *Id.* On the strength of past CRT precedent and the courts' recurring observation that compensation to the author or artist stimulates the creative force,[28] RIAA disputes the Panel's conclusion, contending that the best way to maximize the availability to the public is to ensure that copyright owners receive fair compensation for their works. Petition at 38.

The Services support the Panel's findings and conclusion but offer no legal support for their position except to note that ''[t]he Courts have long held that under copyright law, reward to copyright owners is a 'secondary consideration' that ultimately serves the cause of promoting public availability of copyrighted works.'' Reply to Petition at 27 (citations omitted). The Services assert rightfully that the primary rationale for the copyright law is to stimulate the creation of artistic works for the benefit of the public. *Twentieth Century Music* v. *Aiken*, 422 U.S. 151, 156 (1975), citing *Fox Film Corp.* v. *Doyal*, 286 U.S. 123, 127 (1932) (''The sole interest of the United States and the primary object in conferring this monopoly * * * lie in the general benefits derived by the public from the labors of authors''). But in underscoring the primary purpose for the copyright law, the Court in *Aiken* acknowledges that this aim is achieved by allowing the copyright owners to receive a fair return for their labor, the position advanced by RIAA. *Id.* (''The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good''). *See also Sony Corp. America* v. *Universal City Studios, Inc.*, 464 U.S. 417 (1984); *United States* v. *Paramount Pictures*, 334 U.S. 131 (1948). The positive interplay between compensation and creation is a basic tenet of copyright law, and as such, its contribution to stimulating the creation of additional works cannot be set aside lightly.

In such matters where the Panel failed to discuss any relevant case law or past precedent construing the statutory objective before rendering its determination, the Register finds the Panel acted in an arbitrary manner. The finding is based on the Panel's failure to consider CRT precedent and to provide a rational basis for its departure from prior proceedings construing the same statutory objective. *See Pontchartrain Broad.* v. *FCC*, 15 F.3d 183, 185 (D.C. Cir. 1994) (''an unexplained departure from Commission precedent would have to be overturned as arbitrary and capricious''). *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Insurance Co.*, 463 U.S. 29 (1983); *Celcom Communications Corp.* v. *FCC*, 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp.* v. *FAA*, 758 F.2d 685 (D.C. Cir. 1985).

There is no record evidence to support a conclusion that the existence of the digital transmission services stimulates the creative process. Instead, the Panel made observations concerning the development of another method for disseminating creative works to the public—a valid and vital consideration addressed in the statutory objective concerning relative contributions from each party—but fails to discuss how the creation of a new mode of distribution will itself stimulate the creation of additional works.

[28] *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984), quoting *United States* v. *Paramount Pictures*, 334 U.S. 131, 158 (1948). (''[R]eward to the author or artist serves to induce release to the public of the products of his creative genius.'''); *Twentieth Century Music Corp.* v. *Aiken*, 422 U.S. 151, 156 (1975) (compensating authors ''serve[s] the cause of promoting broad public availability of literature, music, and the other arts''); 115 Rate Adjustment Proceeding, 46 FR 10479 (1981) (In discussing section 801(b)(1)(A), the CRT looked to the purpose of the section 115 license which was ''intended to encourage the creation and dissemination of musical compositions.'' Therefore, the Tribunal set the rate to ''afford songwriters a financial and not merely a psychic reward for their creative efforts'' as a way to maximize the availability of creative works).

Because the Panel failed to reconcile its determination with past CRT precedent and case law, the Register rejects both the Panel's findings and conclusions on this point as arbitrary. Instead, the Register concludes that the record companies and the performers make the greater contribution in maximizing the availability of the creative works to the public, a conclusion consistent with past CRT precedent.

B. Relative Roles of the Copyright Owners and the Copyright Users in Making Product Available to the Public. (17 U.S.C. 801(b)(1)(C)).

The statutory objective addressing the relative roles of the parties contains five different factors, which the Panel evaluated independently. In analyzing the first component of this objective, the relative creative contribution, the Panel found that both the recording companies and the performers make substantial creative contributions to the release of a sound recording. Report ¶ 87. Its determination credited the performers and the record companies for their work in making the musical work come alive. *Id.* ¶¶ 81–83. The Services were found to make no such significant contribution to the creation of the sound recording. Instead, their contribution was seen as more limited, since it merely enhanced the presentation of the final work through unique programming concepts. *Id.* ¶¶ 84–86. On balance, the Panel found ''that the artists and the record companies provide greater creative contributions to the release of sound recordings to the public than do the Services,'' *id.* ¶ 87, a finding supported by CRT precedent.[29]

The Panel continued its consideration of the relative contribution of the owners vis-a-vis the users in making the product available to the public and determined that the Services made the greater contribution with respect to the four remaining factors: technological contributions, capital investment, costs and risks to industry, and the opening of new markets. Report ¶¶ 88, 93, 94, 97, 98, and 109.

In making this determination, the Panel focused on the technological developments made by the Services in opening a new avenue for transmitting sound recordings to a larger and more diverse audience, including the creation of technology to uplink the signals to satellites and transmit them via cable; technology to identify the name of the sound recording and the artist during the performance; and technology for programming, encryption, and transmission of the sound recording. *Id.* ¶¶ 89–92. In contrast, the Panel found that the record companies made no contributions in these areas. *Id.* ¶ 93.

The Panel also weighed the evidence presented in support of the parties' relative roles in making capital investments in equipment and technology, the third factor. The Panel determined that the Services made a substantial showing of their $10 million investment in equipment and technology, Report ¶ 95 and cites therein, whereas RIAA did not suggest that any capital investment was required on its part. *Id.* ¶ 97.

And finally, the Panel found that the fourth factor, the relative costs and risks incurred by the parties in making the product available to the public, was greater for the Services than for the record companies and the performing artists, even though the record companies do incur substantial costs and risks in producing the product used by the Services. *Id.* ¶¶ 98–108. In making its determination, the Panel balanced the costs and risks involved in producing the sound recordings against the cost and risks associated with bringing the creative product to market in a new and novel way. *Id.* ¶¶ 99–107. In support of its findings, the Panel noted that the Services have invested significant start-up costs and are currently undergoing a shift in how they market their services. *Id.* ¶¶ 55, 73–78, 99, and 102. In addition, the Services contend, and the Panel agrees, that the Services face new competition from the internet and digital radio. Consequently, it is far from clear whether the Services can survive. *Id.* ¶¶ 72, 99.

The Panel also found that record companies face tremendous risks when producing new sound recordings, citing the record companies' submissions showing that record companies fail to recover the production costs for approximately 85% of sound recordings, much less show a profit. *Id.* ¶ 105. The Panel, however, went on to find that the record companies have adapted to the vagaries of the music business, and as an industry, have shown consistent growth in units shipped and dollar value of records, CDs, and music videos from 1982–1996. *Id.* ¶ 108.

The Panel's key finding from its analysis of the third objective was that the Services contribute more to the opening of new markets for creative expression through the development of the digital audio services. *Id.* ¶ 109. The Panel credited the Services with opening new markets for creative expression because they expose the public to a broader range of music than does traditional over-the-air radio. Unlike traditional radio, the Services offer multiple channels for classical, jazz, traditional, alternative, and ethnic formats. *Id.* ¶ 110. Because subscribers frequently purchase new music heard for the first time on the service, the Panel found that record companies arguably benefit directly from the expanded musical formats offered by the Services. *Id.* ¶ 112. The Panel also found that the Services' future plans to offer subscribers an opportunity to purchase the sound recordings directly will ''undoubtedly'' open new markets for the record companies. *Id.* ¶¶ 114–115.

The record companies do not accept the Panel's findings concerning this statutory objective, and once again, take issue with the Panel's interpretation, positing that the Panel impermissively focused on ''whether recording companies had made a particular contribution to the *Services* operations—and wholly ignored the contributions that the recording industry had made to the sound recordings themselves.'' Petition at 45–46. RIAA's predicate for its argument is its interpretation that the statutory phrase, ''in the product made available to the public,'' 17 U.S.C. 801(b)(1)(C), refers only to the creation of the sound recordings and not to the Services' creation of a new means for bringing the sound recordings to the listener. Petition at 46.

In addition to this alleged fundamental flaw in interpretation, RIAA contends that the Panel ''improperly collapsed (its cost/risk analysis) into a risk only (analysis)'' and ignored empirical evidence in the record discounting the promotional value of the Services' offerings. *Id.* at 47–48. RIAA, however, fails to note that the Panel did acknowledge that the record companies incur significant costs and risks in their business. Report ¶¶ 105–107. But the Panel also found that the Services presented no additional risk to the record companies ''*unless* the customers of the Services record the sound transmissions in lieu of purchasing these products at a retail store.'' Report ¶ 107 (emphasis added). Because the record companies introduced no evidence showing decreased overall sales of records and CDs, the Panel reasonably found that the record companies did not incur additional risk from lost sales due to the Services' activities. Report ¶¶ 107, 111.

[29] The CRT refused to award broadcasters a share of the cable royalties for their role in formatting radio stations. The Tribunal construed the claim as one for compilation which had a *de minimis* value. The U.S. Court of Appeals for the D.C. Circuit upheld the Tribunal's determination. *NAB* v. *CRT*, 772 F.2d at 931.

If anything, the Panel believed that the Services decreased the risk to the recording companies because the digital audio services have substantial promotional value. The promotional value comes from the constant airplay of new types of music not readily accessible in the marketplace, which in turn stimulates record sales. Report ¶ 110. In making this finding, the Panel relied on Simon's and Rubinstein's testimony that ''subscribers frequently purchase new music precisely because they heard it on one of the Services,'' Report ¶ 112 citing Simon [30] W.D.T. at 1; Rubinstein W.D.T. at 34; Tr. 1442 (Rubinstein), and on the record industries' practice of supplying complimentary copies of their products to the Services for use on the air to promote the sales of an album. Tr. 1291 (Rubinstein); Tr. 1182–83, 1201 (Talley) [31]; DMX Ex. 3. *See also* Tr. 2248 (Wildman) (''Is there a benefit to the record company from getting music exposed that might become a hit that wouldn't get exposed otherwise? Of course there is'').

Furthermore, RIAA's reliance on the preliminary DCR survey for the proposition that the Services do not promote sound recording sales is untenable where the record clearly shows that the record companies provide promotional copies to the Services. In fact, RIAA's own expert acknowledges ''there (are) promotional benefits to recording companies from having their music played on radio stations or the digital music services.'' Tr. 2220 (Wildman).

In contrast to RIAA's fundamental objection to the Panel's interpretation of this statutory objective, the Services contend that the Panel made a reasonable determination that the phrase, ''the product made available to the public,'' applied to both the sound recordings and the entire digital music service. Reply to Petition at 29. This finding is consistent with the 1980 rate adjustment proceeding for the mechanical license, where the CRT credited the record companies, the users of the musical compositions for purposes of the mechanical license, with developing new markets through technological innovations, and through the creation of record clubs, mail order sales, and television advertising campaigns. 46 FR 10480–81 (1981).

In making her determination on this point, the Register reflects on the statutory responsibilities of the Panel which is to set reasonable rates and terms for the public performance of sound recordings by *certain digital audio services.* (emphasis added). ''In deciding to grant a new exclusive right to perform copyrighted sound recordings publicly by means of digital audio transmission, the Committee was mindful of the need to strike a balance among all of the interests affected thereby.'' S. Rep. No. 104–128, at 15–16 (1995). By its very nature, the section 114 license contemplates weighing the contributions of the users in creating and expanding the market for the performance of the sound recording in a digital technological environment. Without dispute, the evidence reveals a large investment of capital by the Services to create a new industry that expands the offerings of the types of music beyond that which one receives over the radio, through live performances, and other traditional means of public performance. Report ¶¶ 44, 49, 52, 99, 102–104, 110, 113; Simon W.D.T. at 3–4; Rubinstein W.D.T. at 13–14; Tr. 853–54 (Del Beccaro); Tr. 1237–40 (Rubinstein); Tr. 1476–78 (Funkhouser); DMX Ex. 32. Conversely, the record companies offered little or no evidence on their contributions relating to the key factors. Report ¶¶ 93, 97, 111.

From the foregoing analysis, the Panel concluded that the record companies contributed more in only one of the five areas under consideration in evaluating this statutory objective, and consequently, the rate should be set at a minimum level in favor of the Services. Report ¶ 198(C).

C. To Minimize Any Disruptive Impact on the Structure of the Industries Involved. (17 U.S.C. 801(b)(1)(D)).

The Panel determined that a rate set too high could cause one or all of the Services to abandon the business. Report ¶¶ 117–118; Troxel [32] W.R.T. 1, 5–6; Tr. 2553–2554; DMX Ex. 49(b). The Panel considered the nature of the Services' business, noting its need to increase its subscriber base just to reach a break-even point without the added obligation of paying an additional fee for a digital performance right. *Id.* ¶¶ 119(a)–(d). The Panel also calculated that the record companies would receive substantially less than a 1% increase in their gross revenues even if the rate were set at the highest proposed level (41.5% of gross revenues), underscoring the lesser impact of the license fees on the record industry. *Id.* ¶ 119.

RIAA implies that a low statutory rate for the digital performance right will have a negative impact on their future negotiations with other digital services. RIAA RPF ¶¶ 58, 105; Petition at 43. They also object to the Panel's constant reference to revenues generated from the distribution and reproduction rights and its alleged lack of consideration of CRT precedent. Petition at 43–44.

In support of the Panel's evaluation, the Services note that RIAA failed to introduce any evidence concerning the impact a low rate would have on the record companies and performing artists, in direct contrast to the abundance of financial information submitted by the Services in support of their assertion that a high rate could devastate the industry. Reply to Petition at 28.

While RIAA correctly states that the Panel considered the record companies' revenues generated from the exercise of other rights granted to them under the Copyright Act, the Panel's purpose was merely to demonstrate the financial health of the industries. The Panel never implied that the record companies should receive anything less than reasonable compensation under the DPRSRA, nor that their revenues from the exercise of the distribution and reproduction rights are meant to compensate them for the use of their creative works under the new statutory license. Rather, it determined that a reasonable rate for the digital performance right should be set at a level to allow the three companies currently doing business to continue to do so. This balance in favor of the Services supports both the statutory objective to consider the impact on the industries and Congressional intent not to hamper the arrival of new technologies. S. Rep. No. 104–128, at 15–16 (1995). The law requires the Panel, and ultimately the Librarian, to set a reasonable rate that minimizes the disruptive impact on the industry. It does not require that the rate insure the survival of every company. See 115 Rate Adjustment Proceeding, 46 FR 10486 (1981) (''We conclude that while the Tribunal must seek to minimize disruptive impacts, in trying to set a rate that provides a fair return it is not required to avoid all impacts whatsoever'').

The Register acknowledges RIAA's uneasiness with the possibility that the rate which is ultimately adopted may have precedential value for their negotiations with other digital services, but such concern is misplaced. The rate under consideration applies only to the non-interactive digital audio subscription services, provided, of

[30] Senior Vice-President of Programming at Digital Cable Radio Associates.

[31] Executive Vice-President and Chief Technical Officer of Digital Music Express who oversees research and development, and technical operations worldwide.

[32] Chief Executive Officer and President of Digital Music Express since July 1997.

course, that they are eligible under the law and comply with all legal requirements. See 17 U.S.C. 114(d)(2). Congress, fully recognizing the threat that interactive services pose to the record companies, crafted the law so that they were ineligible for the compulsory license. The result of this decision is that record companies have an opportunity to negotiate an appropriate marketplace rate for a digital performance license with these services.

> Interactive services, which allow listeners to receive sound recordings ''on-demand,'' pose the greatest threat to traditional record sales, as to which sound recording copyright owners (of sound recordings) must have the right to negotiate the terms of licenses granted to interactive services.

S. Rep. No. 104–128, at 24 (1995). Congress also included provisions in the DPRSRA to establish different rates for different types of digital audio subscription services. Section 114(f)(1) states that ''(s)uch terms and rates shall distinguish among the different types of digital audio transmissions then in operation.'' This language gives the Panel and the parties broad discretion in setting rates for different types of digital audio services, when such distinction is warranted. Nor must the record companies accept the final rate from this determination for a new type of digital audio service which emerges before the next regularly scheduled rate adjustment proceeding. The law expressly allows for another rate-setting proceeding upon the filing of a petition. 17 U.S.C. 114(f)(4)(A)(i). Together, these provisions provide an opportunity to the record companies to make their case for a higher rate, where circumstances support such a determination.

In addition, as the market conditions change and the industry shows significant growth and profitability, another Panel will have an opportunity to make adjustments to the rate, and may well find that the changed circumstances favor an upward adjustment. In any event, the Register must make her recommendation based on the evidence in the current record before the Panel, which supports the Panel's determination that the best way to minimize the disruptive impact on the structure of the industries is to adopt a rate from the low range of possibilities. Report ¶ 198(D).

D. To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions. (17 U.S.C. 801(b)(1)(B)).

Usually this balance is struck in the marketplace through arms-length negotiations; and even in the case of a statutory license, Congress encourages interested parties to negotiate among themselves and set a reasonable rate which inevitably affords fair compensation to all parties. 17 U.S.C. 114(f)(1), (4); 115(c)(3); 116(b); 118(b); and 119(c). A statutory rate, however, need not mirror a freely negotiated marketplace rate—and rarely does—because it is a mechanism whereby Congress implements policy considerations which are not normally part of the calculus of a marketplace rate. See 115 Rate Adjustment Proceeding, 46 FR 10466 (1981) (determining that the mechanical license regulates the price of music to lower the entry barriers for potential users of that music).

The creation of the digital performance right embodied similar considerations. It affords the copyright owners some control over the distribution of their creative works through digital transmissions, then balances the owners' right to compensation against the users' need for access to the works at a price that would not hamper their growth.

In the current proceeding, the Panel considered proposed marketplace benchmarks, including all the economic data, and weighed the record evidence in light of the statutory objectives. This process is structured so that it affords the copyright owners reasonable compensation and the users a fair income—the purpose of the second statutory objective. See 17 U.S.C. 801(b)(1)(B). Accordingly, a recommended rate so calculated achieves this final statutory objective, in that it reflects the balance between fair compensation for the owners and a fair return to the users. As fully discussed above, the Register supports the Panel's methodology in reaching its determination (although she rejects as arbitrary the Panel's application of that methodology in some respects) and has adopted the Panel's overall approach in making her recommendation to the Librarian.

d. The Register's Recommended Rate

Rate setting is not a precise science. National Cable Television Assoc. Inc., 724 F.2d 176, 182 (D.C. Cir. 1983). (''Ratemaking generally 'is an intensely practical affair.' The Tribunal's work particularly, in both ratemaking and royalty distributions, necessarily involves estimates and approximations. There has never been any pretense that the CRT's rulings rest on precise mathematical calculations; it suffices that they lie within a 'zone of reasonableness' ''). It requires evaluating the marketplace points of reference and tempering the choice of any proposed rate with the policy considerations underpinning the objectives of Congress in creating the license. Because this process requires the consideration of numerous factors, the CARPs, as the Tribunal before them, have considerable discretion in setting rates designed to achieve specific statutory objectives. *See* RIAA v. *CRT*, 662 F.2d at 9 (''To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a 'zone of reasonableness' '').

Discretion in setting rates, however, assumes that the underlying rationale for making a determination is sound—a finding which the Register could not make in this proceeding because the Panel's undue reliance on the rate in the DCR license agreement, and its subsequent manipulation of the license fee, were arbitrary actions. *See Permian Basin Area Rate Cases*, 390 U.S. 747 (1968) (Rate setting agency allowed to use a variety of regulatory methods in setting rates provided that the result is not arbitrary or unreasonable). Consequently, the Register recommended that the Librarian reject the Panel's determination, which he did, and set a new rate.

In formulating her recommendation as to the appropriate rate for the digital performance license, the Register, like the Panel, considered the relevant marketplace points of reference offered into evidence.[33] These reference points guided the Register in her task of setting a reasonable rate for the performance of digital sound recordings. But unlike the Panel, the Register gave more consideration to the rates paid for the performance right in the musical compositions, because these rates represent an actual marketplace value for a public performance right in the digital arena, albeit not the digital performance right in sound recordings. The Register took this approach after finding that the DCR negotiated license fee could not reflect accurately the

[33] The values of the relevant marketplace reference points, the DCR negotiated license fee and the license fee for the performance of the musical works, are subject to a protective order, and hence, their numerical values have been omitted. Nevertheless, the values of the performance rights embodied in these licenses figure prominently in the determination of the value for the digital performance right in sound recordings. In fact, the sum of these license fees establishes the outer boundary of the ''zone of reasonableness'' for this proceeding.

marketplace value of the digital performance right since no such legal right existed at the time the rate was negotiated, and the negotiating parties were unwilling to enter a licensing agreement for the digital performance right absent a partnership agreement.

Nevertheless, the Register did take into account the negotiated value of the digital performance right in the DCR license in making her determination that the statutory rate should be less than the value of the performance rights of the musical compositions. This determination followed from a review of the evidence on the relative value of the sound recording component and the musical works component of a phonorecord, which failed to support the record industry's assertion that the marketplace valued the sound recording component more than the musical works component. This being so, the Register evaluated the only other relevant marketplace point of reference, the negotiated DCR license fee. Because this fee is considerably lower than the total value of the marketplace license fees which each Service pays for the right to publicly perform the musical works, and while not a true marker for the value of the digital performance right, it supports a determination that the value of the performance right in the sound recording does not exceed the value of the performance right in the musical works.

In addition to these factors, the Register considered the statutory criteria and Congress' intent in creating the license. Unlike the Panel, which found that all four factors support a low rate, the Register found that the copyright owners did more ''[t]o maximize the availability of creative works to the public,'' see 17 U.S.C. 801(b)(1)(A), and should receive fair compensation for their contributions in this area. However, the three remaining factors, especially the fourth factor, which requires that the rate be set ''[t]o minimize any disruptive impact on the structure of the industries involved,'' see 17 U.S.C. 801(b)(1)(D), compels the Register to consider the economic health of the digital audio transmission industry.

The evidence clearly shows that the Services have been facing an uphill battle in their struggle to achieve profitability. At this time, the digital audio industry is still struggling to create a sustainable subscriber base, and as yet, no digital audio transmission service has shown a profit nor does any service expect to reach profitability in the near future. Unfortunately, the actual state of financial health within the industry is difficult to ascertain from the projected budgets put forward by the Services. Nevertheless, the 5% rate proposed by the Panel did not draw an objection from the Services, indicating a reasonable state of financial health to absorb at least a rate set at this level.

For the foregoing reasons, the Register recommends a rate that will not harm the industry at this critical point in its development and finds that a 6.5% rate achieves this aim and meets all other statutory objectives. This rate reflects the deference the Register accorded the value of the performance right in the musical works, the consideration of the financial health of the industry, and the recognition that copyright owners contribute the lion share's to the creation of new works for the public's enjoyment.

e. Terms

On June 2, 1997, the Services submitted general comments concerning proposed terms and conditions for the digital performance license pursuant to the March 28, 1997, Order of the Copyright Office. They later proposed specific terms concerning how the Services would make payment, how often they would pay, and procedures for verifying the accuracy of those payments, including terms on confidentiality, recordkeeping, and audits. Services PF ¶¶ 122–128; 284–304. Included in their submissions were proposed terms establishing a payment schedule for the distribution of royalties to the featured artists and the nonfeatured musicians and vocalists. Services PF ¶¶ 287–289. The Panel refused to adopt these terms because the Services failed to present any evidence or testimony to support their proposal, but more importantly, because the Panel found that ''the issue of the timing of payments from the RIAA Collective to artists and other performers is not within the scope of this proceeding.'' Report at 56 n.21.

RIAA made similar proposals on how to administer the royalty payments, but offered two additional considerations, a minimum fee ''equivalent to the rate adopted in this proceeding'' and a late fee for untimely payments. RIAA PF ¶¶ 125–160. The Panel rejected the proposal to impose a minimum fee, see discussion supra, but accepted the RIAA proposal to impose a 1.5% late fee.

The Register supports and adopts the Panel's decision to reject the Services' proposed terms concerning further distribution of royalties to certain copyright owners by RIAA on the grounds that no evidence was introduced in support of the terms. Because this is a sufficient ground on which to reject the Services' proposed term, the Register need not address the Panel's determination that it lacked the authority to consider a payment schedule for the performing artists. The Register also need not address the Panel's rejection of the minimum fee because no party chose to challenge the Panel's decision. *See* n. 7, *supra.*

The parties' reactions to the terms adopted by the Panel

The Services did not file a post-panel motion to modify or set aside the Panel's determination, thereby signaling their acceptance of the Panel's resolution of any conflict between the parties concerning the terms. However, RIAA has raised two key items for further review by the Librarian: The adoption of a term which defines when copyright infringement occurs for purposes of the statutory digital performance license and the creation of a payment schedule that allows the Services to spread out their payment for the performances made between February 1996, the effective date of the Act, and November 1997, the month the Panel filed its report with the Librarian of Congress.[34] Petition at 7 n. 1.

The Panel's adoption of two of its terms was either arbitrary or contrary to law

The Register has determined that the Panel had no authority to set terms which attempt to delineate the scope of copyright infringement for the digital performance license, or alter a payment schedule already set by law. See Report ¶¶ 187–189, 206(a), (b).

1. *Payment of arrears.* The Panel adopted a term which allowed the Services to make back payments over a 30-month period for use of the sound recordings between February 1, 1996, and the end of the month in which the royalty rate is set and to delay the first payment for six months. Report ¶¶ 187, 206(a). The Register has determined, however, that adoption of this term is contrary to law.

Section 114(f)(5)(B) of the Copyright Act states that ''(a)ny royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.'' The ''arrears'' referenced in the statute refers to the copyright liability that accrued to the Services for those performances made since February 1, 1996, the effective date of the Act, and the end of the month in which the royalty rate is set.

[34] RIAA did not object to the Panel's refusal to grant its request for a minimum fee in its petition, nor does the Register find any reason to question the Panel's determination. As discussed supra, the Register finds the Panel's disposition on this issue to be well reasoned and supported by the evidence.

In spite of the express statutory language, the Panel fashioned a payment schedule to ease the burden on the Services in meeting this obligation.

The Panel found support for its action in the 1980 jukebox rate adjustment proceeding, in which the CRT raised the rate from $8 to $50, but did so in a progressive fashion. Report ¶ 186. The determination required the jukebox operators to make the first increased payment of $25 per jukebox per year on January 1, 1982, and a second $25 annual payment the following year. The CRT did not require the full $50 annual rate to be paid until January 1, 1984, approximately three years after setting the rate. 46 FR 884, 888, 890 (1981). The Tribunal adopted the phase-in payment schedule relying on its duty to set rates in accordance with the statutory objectives. It found that the gradual increase in payments furthered the objective concerned with minimizing the disruptive impact on the industries. *Id.* at 889. The Panel relied upon this CRT decision in adopting its phase-in program for payment of the arrears over a 30-month period.

The Services embrace the Panel's reliance on past CRT precedent for the inclusion of the phase-in payment term and claim that RIAA also agreed to allow the Services to make the ''back payments'' over a period of time. Reply to Petition at 14 n. 5. This assertion, however, is inaccurate. RIAA agreed that a phase-in schedule would be appropriate for the minimum fee, but never posited such a payment schedule for the arrears. See Tr. 2829 (RIAA closing argument). By comparing RIAA's statement on the proposal for making payments of a minimal fee,

> The recording industry proposes that the minimum fee be phased in to help minimize any disruptive effect from the fact that, for the first time, the services are going to be paying a fair fee—in fact, any fee at all for the performance of sound recordings,

Id. at 2829, see also RIAA PF ¶¶ 150–152, with its statement concerning the timing of the payment of arrears,

> In terms of the timing of the back payment, the statute leaves absolutely no question as to when the back payment from the services is due for the period from the Act's effective date through the date on which the Panel issues its decision.
>
> Section 114(f)(5)(B) says that ''any royalty payment in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.''

Id. at 2829–2830, see also RIAA PF ¶ 157, it is absolutely clear that RIAA never agreed to a payment scheme for the arrears that would allow the Services to make partial payments over a 30-month period.

In another attempt to support the Panel's conclusion, the Services construe the statutory provision broadly and argue that arrears refers to ''any royalty payment in arrears'' and ''does not specifically cover the back payment for the extended period between the 1995 Act's February 1, 1996, effective date and the time the Panel sets the performance rate.'' Services RF ¶ 157. This assertion, however, is inconsistent with the legislative history and the plain language of the statute.

Thus, the Panel had no authority to create a graded payment schedule for the payment of the arrears because the statute expressly stated when payment was to occur. Section 114(f)(5)(B) states, without qualification, that ''[a]ny royalty payments in arrears shall be made on or before the twentieth day of the month *next succeeding the month in which the royalty fees are set.*'' (emphasis added). It is a well-established principle that, in interpreting the meaning of a statute, the language of the law is the best evidence of its meaning. *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989); Norman S. Singer, Sutherland Statutory Construction sec. 46.01 (5th ed. 1992 rev.) Because the statutory language is clear on its face, the Register finds that the Panel's and the Services' reliance on the CRT 1980 jukebox decision is arbitrary and contrary to well-established principles of law. And even if the statutory language were ambiguous, the legislative history supports the Register's and RIAA's interpretation of section 114(f)(5)(B).[35]

Because the Panel's action exceeded its authority, the Register recommends that the Librarian reject the proposed term because its adoption would be contrary to law.

2. *Copyright infringement.* The Panel adopted a term which stated that ''[i]f a Service fails to make timely payments, it will be subject to liability for copyright infringement. Such liability will only come about, however, for knowing and willful acts which materially breach the statutory license terms.'' Report ¶ 206(b). The Register has determined that this term is contrary to law.

RIAA contends that the Panel ''usurped the authority of Article III courts by attempting to define the circumstances where the Services are liable for copyright infringement.'' Petition at 7 n.1. In response, the Services argue that the DPRSRA supports the Panel's suggestion that minor technical violations should not result in an infringement action. Services Reply to Petition at 14 n.5. Specifically, the Services point to section 114(j)(7)(B) which limits complement to the performance of sound recordings from a single album, which Congress included ''[t]o avoid imposing liability for programming that unintentionally may exceed the complement.'' S. Rep. No. 104–128, at 35 (1995).

The Register acknowledges that Congress made provisions to protect users from copyright liability for programming that unintentionally exceeds the complement, see 17 U.S.C. 114(j)(7), but she finds it impermissible to expand a particular provision of the copyright law which limits copyright liability under one set of circumstances to include additional limitations not contemplated by Congress. *Fame Publishing Co.* v. *Alabama Custom Tape, Inc.*, 507 F.2d 667, 670 (5th Cir.) *cert. denied*, 423 U.S. 841 (1975) (''We begin by noting that the compulsory license provision is a limited exception to the copyright holder's exclusive right to decide who shall make use of his composition. As such, it must be construed narrowly, lest the exception destroy, rather than prove, the rule. Thus we should neither expand the scope of the compulsory license provision beyond what Congress intended in 1909, nor interpret it in such a way as to frustrate that purpose'').[36]

But more importantly, in examining the legislative history, it is clear that Congress meant for the CARP to have limited authority in adopting reasonable terms.

> By terms, the Committee means generally such details as how payments are to be made, when, and other accounting matters (such as are prescribed in section 115). In addition, the Librarian is to establish related terms under section 114(f)(2). Should additional terms be necessary to effectively implement the statutory license, the parties may negotiate such provisions or the CARPs may prescribe them.

S. Rep. No. 104–128, at 30 (1995). This language clearly indicates that the CARP had authority to set reasonable terms only so far as those terms insured the smooth administration of the license. There is no indication in the statutory language or in the legislative history that the scope of the terms should go

[35] S. Rep. No. 104–128, at 30 (1995) (''If the royalty fees have not been set at the time of performance, the performing entity must agree to pay the royalty fee to be determined under this subsection by the twentieth day of the month following the month in which the rates are set'').

[36] Congress defined the scope of the digital performance right granted to the copyright owner and under what circumstances a digital audio service infringes that right. *See*, e.g., 17 U.S.C. 114 (d) and (e)(5).

beyond the creation of a workable administrative system and reach substantive issues, such as defining the scope of copyright infringement for those availing themselves of the statutory license.

Congress carefully delineated the scope of the digital performance right and the limitations on that right within the provisions of the statute. Section 114(d), entitled ''Limitations on Exclusive Right,'' states with specificity when a performance by means of a digital audio transmissions is not an infringement, just as section 114(f)(5) defines when a public performance of a sound recording by means of a nonexempt subscription digital transmission is not an infringement. For the Panel to fashion a term further delineating the issue of copyright infringement when Congress has already acted is an improper exercise of authority beyond that granted under the statute.

Accordingly, the Register finds that the Panel had no authority to set a term construing the meaning of copyright infringement for purposes of section 114. See Report ¶¶ 188, 206(b). Because the Panel's action exceeded its authority, the Register recommends that the Librarian reject the proposed term because its adoption would be contrary to law.

f. Other Issues

1. *Effective date.* Section 114(f)(5)(B) states that payments in arrears for the performance of sound recordings prior to the setting of a royalty rate are due on a date certain in the month following the month in which the rate is set. Both the Panel and RIAA assume that the ''date the royalty rate is set'' is the date the Panel submits its report to the Librarian of Congress. See Report ¶ 186; Petition at 7 n.1. The Register disagrees with this assessment.

Section 802(g) governs judicial review of the Librarian's decision with respect to CARP determinations. The section allows an aggrieved party 30 days to file an appeal with the United States Court of Appeals for the District of Columbia Circuit, but does not relieve a party of his or her obligation to make royalty payments during the pendency of the appeal. In the event that no appeal is taken, the section states that ''the decision of the Librarian is final, and the royalty fee * * * shall take effect as set forth in the decision.'' 17 U.S.C. 802(g). Neither section 114 nor chapter 8 makes further reference to the possible effective date of royalty rates.

As discussed in an earlier order setting a rate for the satellite compulsory license, 17 U.S.C. 119, the Register interprets the decision referenced in section 802(g) ''to mean the decision of the Librarian, and not the decision of the CARP, since section 802(g) only refers to the decision of the Librarian. Consequently, the Register concludes that only the Librarian of Congress has the authority to set the effective dates of the royalty rates in this proceeding.'' Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55754 (1997). See also *RIAA* v. *CRT*, 662 F.2d at 14 (''When the statute authorizing agency action fails to specify a timetable for effectiveness of decisions, the agency normally retains considerable discretion to choose an effective date'') (footnote omitted). This reasoning applies equally to the current proceeding, since no other guidance for setting the effective date is to be found in the statute or the legislative history.

The Register has pondered the question of an appropriate effective date and believes that the Panel's concern with minimizing the disruptive impact on the structure of the industries involved was well founded. See discussion supra concerning the economic health of the Services. Consequently, the Register proposes an effective date of June 1, 1998, which would require the Services to make full payment of the arrears on July 20, 1998, in addition to the payment for the month of June 1998, with subsequent payments to RIAA on the 20th day of each subsequent month. This date provides the Services with a measured amount of time to provide for any necessary adjustments in their business operations to meet their copyright obligations.

The Tribunal took a similar course when it set the effective date for implementing the rate increase for making and distributing phonorecords approximately six months after publication of its final rule. Section 115 Rate Adjustment Proceeding, 46 FR 10486 (1981). The Tribunal chose not to implement the rate change immediately in order to minimize the effect of the upward adjustment on the copyright users. The United States Court of Appeals for the District of Columbia Circuit upheld the Tribunal's decision to postpone the effective date because:

> The Tribunal's opinion demonstrates its concern ''to minimize disruptive impacts'' on the recording industry, and its view that the effective date of a royalty adjustment should be arranged so as to be ''less disruptive to the industries.'' Although the Tribunal concluded that a single increase to the full four-cent rate would not be unduly disruptive, it was within the Tribunal's discretion to give the industry adequate lead time to prepare for the increase.

RIAA v. *CRT*, 662 F.2d at 14 (citations omitted).

2. *Value of an individual performance of a sound recording.*

The Register notes that the Panel stopped prematurely in its consideration of the value of the public performance of a sound recording. Its entire inquiry focused on the value of the ''blanket license'' for the right to perform the sound recording, without once considering the value of the individual performance—a value which must be established in order for the collecting entity to perform its function not only to collect, but also to distribute royalties. Consequently, the Register has made a determination that each performance of each sound recording is of equal value and has included a term that incorporates this determination.

To do otherwise requires the parties to establish criteria for establishing differential values for individual sound recordings or various categories of sound recordings. Neither the Services nor RIAA proposed any methodology for assigning different values to different sound recordings. In the absence of an alternative method for assessing the value of the performance of the sound recording, the Register has no alternative but to find that the value of each performance of a sound recording has equal value. Furthermore, the structure of the statute contemplates direct payment of royalty fees to individual copyright owners when negotiated license agreements exist between one or more copyright owner and one or more digital audio service. To accommodate this structure in the absence of any statutory language or legislative intent to the contrary, each performance of each sound recording must be afforded equal value.

This determination does not alter the statutory provision that specifies how the copyright owner of the right to publicly perform the sound recording must allocate the statutory fees among the recording artists. See 17 U.S.C. 114(f)(2).

3. *Audit of the designated collective.* Although the membership of the collective represented by RIAA includes over 275 record labels which create more than 90 percent of all legitimate sound recordings sold in the United States, it does not represent the record companies responsible for the creation of the remaining 10% of the sound recordings. Report ¶ 20. Nevertheless, the Panel found, and the Register concurs, that the parties' suggestion to designate a single entity to collect and to distribute the royalty fees creates an efficient administrative mechanism. Report ¶ 184.

It is common practice, however, for the government body making such designations to implement safeguards to monitor the functions of the collective.[37] To this end, the Register recommends new terms that afford the copyright holders a right to audit the collective's practices in handling the royalty fees. The Register takes this step to insure copyright holders access to the records of the organization charged with the fiduciary responsibility of making an equitable distribution among those entitled to receive a portion of the funds, while at the same time preserving the confidentiality of the organization's business records. These terms mirror those formulated by the parties and adopted by the Panel which allow the collective to audit the business records of the Services to insure proper payment of the royalties.

4. *Deduction of administrative costs.* Neither the parties nor the Panel gave any consideration to the manner in which the collecting entity would deduct from payments to copyright owners its costs of administering the funds it receives and disburses. Nevertheless, the Panel should have addressed this key term of the compulsory license. Therefore, the Register finds it necessary to establish an additional term that permits the collecting entity to deduct from the royalties it pays to copyright owners the costs it incurs in administering the funds, so long as the costs deducted are reasonable and are no more than the actual costs incurred by the collecting entity.

5. *Unknown copyright owners.* The digital audio services will pay royalties on all sound recording performances without regard to the further disbursement of these fees to the numerous copyright holders. The collective will have little difficulty in identifying and locating the overwhelming majority of the copyright holders entitled to receive a portion of the fees, since the membership of the collective represents the interests of the copyright holders in over 90% of all sound recordings. Problems may arise, however, as RIAA attempts to identify and locate the copyright holders to the remaining 10% of the sound recordings. In anticipation of the likelihood that RIAA will not be able to locate all copyright holders, the Register recommends the adoption of a term that segregates the fees for unknown copyright owners into a separate trust account for future distribution to the rightful owner, or in the event that the owner is not found, allows the collective to use the funds after a period of three years, see 17 U.S.C. 507(b), to offset its administrative costs associated only with the collection and distribution of royalty fees collected under the statutory license.

6. *Rates for other types of digital audio services.* The rates and terms announced in this notice apply to DCR, DMX, and Muzak, the three digital audio transmission services participating in this proceeding, and to any other digital audio transmission service that avails itself of the compulsory license, provided that the service is of the same type. The Register raises this point to avoid any confusion over the Panel's statement which implies that the rates and terms set in this proceeding ''shall be binding on all copyright owners of sound recordings and entities performing sound recording[s].'' Report ¶ 1, citing 17 U.S.C. 114(f)(2). A general provision, however, must be read in conjunction with more specific statutory language; in this case, section 114(f)(4)(A), which provides for additional rate adjustment proceedings upon petition from any copyright owner or entity performing sound recordings when a new type of digital audio transmission becomes or is about to become operational.

VI. Conclusion

In considering the evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian adopt a statutory rate for the digital performance of sound recordings, pursuant to 17 U.S.C. 114, of 6.5% of gross revenues from subscribers residing within the United States.

In addition, the Register recommends that the Librarian adopt the reasonable terms propounded by the Panel except for those terms concerning the payment schedule for arrears and potential limitations on the scope of copyright infringement. The Register also recommends setting June 1, 1998, as the effective date for implementing the new rate and terms in order to ease the burden on each Service on meeting its initial obligations under the statutory license.

VII. The Order of the Librarian of Congress

Having duly considered the recommendations of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter to set reasonable terms and rates for the digital performance right in sound recordings, 17 U.S.C. 114, the Librarian of Congress fully endorses and adopts her recommendation to set the rate for the statutory license at 6.5% of gross revenues from U.S. residential subscribers. This rate shall apply to those digital audio services represented in this proceeding and any other eligible digital audio service of the same type that subsequently enters the market and makes use of the statutory license. The Librarian of Congress also adopts the Register's recommendation to reject the terms concerning potential limits on what constitutes copyright infringement and the proposed schedule for the payment of the arrears.

For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing this order which adopts new Copyright Office regulations setting reasonable terms and rates for the digital performance right in sound recordings.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings

Final Regulation

In consideration of the foregoing, part 260 of 37 CFR is added to read as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

Sec.
260.1 General.
260.2 Royalty fees for the digital performance of sound recordings.
260.3 Terms for making payment of royalty fees.
260.4 Confidential information and statements of account.
260.5 Verification of statements of account.
260.6 Verification of royalty payments.
260.7 Unknown copyright owners.

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.1 General.

(a) This part 260 establishes terms and rates of royalty payments for the public performance of sound recordings by nonexempt subscription digital transmission services in accordance with the provisions of 17 U.S.C. 114 and 801(b)(1).

[37] A government's general policy toward the regulation of collective administration should be to limit government intervention to only ''that which is necessary to facilitate the effective operations of the collective administration organization, consistent with the private character of the rights involved, while checking possible abuses by that collective in the least intrusive manner possible within'' the overall context of the society involved. David Sinacore-Guinn, Collective Administration of Copyrights and Neighboring Rights, 544 (1993).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, a nonexempt subscription digital transmission service may engage in the activities set forth in 17 U.S.C. 114.

§ 260.2 Royalty fees for the digital performance of sound recordings.

(a) Commencing June 1, 1998, the royalty fee for the digital performance of sound recordings by nonexempt subscription digital services shall be 6.5% of gross revenues resulting from residential services in the United States.

(b) A nonexempt subscription digital transmission service (the ''Licensee'') shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(c)(1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors if any, less advertising agency commissions not to exceed 15% of those fees incurred to recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the Programming Service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise or anything or service of value is received by licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the Programming Service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (c)(1) (i) through (vii) of this section.

(2)Gross revenues shall include such payments as are in paragraphs (c)(1) (i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from ''gross revenues'' as defined in paragraph (c)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(d) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 260.3 Terms for making payment of royalty fees.

(a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(b) Payment shall be made on the twentieth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct reasonable costs incurred in the administration of the distribution of the royalties, so long as the reasonable costs do not exceed the actual costs incurred by the collecting entity.

(e) Commencing June 1, 1998, and until such time as a new designation is made, the Recording Industry Association of America, Inc. shall be the agent receiving royalty payments and statements of accounts.

§ 260.4 Confidential information and statements of account.

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt subscription digital transmission service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt subscription digital transmission service and an interested party, or between one or more interested parties; *Provided* that all such information shall be made available, for the verification proceedings provided for in §§ 260.5 and 260.6 of this part.

(b) Nonexempt subscription digital transmission services shall submit monthly statements of account on a form provided by the agent designated to collect such forms and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees of the designated agent who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing their assigned duties during the ordinary course of business, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(e) The designated agent shall implement procedures to safeguard all confidential financial and business information, including but not limited to royalty payments, submitted as part of the statements of account. Confidential information shall be maintained in locked files.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

§ 260.5 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C.

114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt subscription digital transmission service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the entity designated by the copyright arbitration royalty panel in 37 CFR 260.3 to receive and to distribute the royalty fees.

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), or their designated agents.

§ 260.7 Unknown copyright owners.

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three year period. After the expiration of this period, the collecting agent may use the unclaimed funds to offset the cost of the administration of the collection and distribution of the royalty fees.

Dated: April 17, 1998.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–12266 Filed 5–7–98; 8:45 am]

BILLING CODE 1410–33–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 325–6]

Approval and Promulgation of State Implementation Plans

CFR Correction

In title 40 of the Code of Federal Regulations, part 52 (§ 52.1019 to end), revised as of July 1, 1997, in appendix D to part 52, on page 610, in the first and second columns, equations d–1 and d–2 were inadvertently omitted. Additionally, the second line in the legend for Equation D–2 was incorrectly printed. The missing equations and corrected line should read as follows:

Appendix D to Part 52—Determination of Sulfur Dioxide Emissions From Stationary Sources by Continuous Monitors

* * * * *

$$\overline{X}\ \frac{\sum_{i=1}^{n} x_i}{n} \qquad \text{Equation D-1}$$

* * * * *

$$\mathrm{C.I.}_{95} = \frac{t_{.975}}{n\sqrt{n-1}}\sqrt{n\left(\sum \chi_i^{\,2}\right)-\left(\sum \chi_i\right)^2} \qquad \text{Equation D-2}$$

* * * * *

$t_{.975} = t_{1-a/2}$, and

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318066–8066–01; I.D. 022698A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 25; Correction

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

ACTION: Final rule; correction.

SUMMARY: This rule removes regulatory language inadvertently added, clarifies the raised footrope requirement for Small Mesh Area 1 & 2, and corrects an

amendatory instruction to the regulatory text of the final rule implementing Framework Adjustment 25 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) published Tuesday, March 31, 1998, and corrected on Wednesday, April 22, 1998.

DATES: Effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, 978–281–9326.

SUPPLEMENTARY INFORMATION:

Background

This document makes three corrections to the regulations implementing Framework Adjustment 25 to the FMP which was published on March 31, 1998 (63 FR 15326) and corrected on April 22, 1998 (63 FR 19850).

Section 648.80(a)(8) states that vessels fishing with mesh smaller than the minimum mesh size are subject to the raised footrope requirement specified in § 648.80(a)(8)(iv). As with the finfish excluder device required in the shrimp fishery, the intent of the raised footrope gear modification is to reduce bycatch of regulated multispecies when vessels are fishing with nets of mesh less than the minimum mesh size. Because vessels fishing under the provisions of the Small Mesh Northern Shrimp Fishery Exemption Area, which is inclusive of Small Mesh Area 1 & 2, must properly secure a finfish excluder device in their trawl nets, this rule clarifies and corrects the intent of the Small Mesh Area 1 & 2 provision by allowing small mesh vessels to employ either a raised footrope or excluder device in their trawl gear when fishing in these two small mesh areas, depending on the species of fish targeted.

In § 648.81, paragraph (g)(1)(i) describes the Gulf of Maine Inshore Closure Area I. However, this paragraph also inadvertently refers to Inshore Closure Area III, which is described in § 648.81(g)(1)(iii). This correction document removes the reference to Inshore Closure Area III from § 648.81(g)(l)(i).

This document corrects an amendatory instruction contained in the final rule document. Amendatory instruction 6 stated that in § 648.86, paragraph (b)(1)(ii) is revised. However, NMFS only intended to revise the introductory text to § 648.86(b)(1)(ii). Therefore, this documents revises the amendatory instruction to state that only the introductory text to § 648.86(b)(1)(ii) is revised.

Correction

Accordingly, in the publication on March 31, 1998, of the final regulations to implement Framework Adjustment 25 to the Northeast Multispecies FMP (I.D. 022698A) and corrected on April 22, 1998 (63 FR 19850), which was the subject of FR Doc. 98–8288, is corrected as follows:

1. On page 15330, in the second column, under § 648.80(a)(8)(i), ninth line down, insert the phrase ''or (a)(3)(ii)'' after the words ''paragraph (a)(8)(iv).''

2. On page 15331, in the second column, under § 648.81(g)(1)(i), fifth line, remove ''apply to Inshore Closure Area III''.

3. On page 15332, in the second column, amendatory instruction 6 to § 648.86, third line, correct ''(b)(1)(ii)'' to read ''(b)(1)(ii) introductory text''.

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

Dated: May 4, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–12253 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 89
Friday, May 8, 1998

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.

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the ''Commission'') is commencing a rulemaking to amend its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 (''the Care Labeling Rule'' or ''the Rule''). The Commission proposes amending the Rule: (1) To require that an item that can be cleaned by home washing be labeled with instructions for home washing; (2) to allow that a garment that can be professionally wet cleaned be labeled with instructions for professional wet cleaning; (3) to clarify what can constitute a reasonable basis for care instructions; and (4) to change the definitions of cold, warm, and hot water in the Rule. The Commission is commencing this rulemaking because of the comments filed in response to its Advanced Notice of Proposed Rulemaking (''ANPR''), and other information discussed in this notice. The Commission invites interested parties to submit written data, views, and arguments. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and a description of a workshop conference that will be held to discuss the issues. The Commission will announce the time and place of the public workshop after the close of the comment period. Any persons wishing to participate in the public workshop must file a comment in response to this notice and must indicate therein their interest in participating. The comments will be available on the public record and on the Commission's web site on the Internet (http://www.ftc.gov) so that interested parties can review them. After the conclusion of the workshop, the record will remain open for 30 days for additional or rebuttal comments. If necessary, the Commission will also hold hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c). Interested parties who wish to request such hearings should file a comment in response to this notice and indicate therein why they believe such hearings are necessary and how they would participate in such hearings.

DATES: Written comments must be submitted on or before July 27, 1998.

ADDRESSES: Written comments should be identified as ''16 CFR Part 423—Care Labeling Rule—Comment,'' and sent to Secretary, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington D.C. 20580. To facilitate prompt and efficient review and dissemination of the comments to the public, all written comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. In order for files from other operating systems to be accepted, they should be submitted in ASCII text format.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or James Mills, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Sixth St. and Pennsylvania Ave., N.W., S–4302, Washington, D.C. 20580, (202) 326–2966 or (202) 326–3035.

SUPPLEMENTARY INFORMATION:

Part A—Introduction

This notice is being published pursuant to Section 18 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Care Labeling Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971). In 1983, the Commission amended the Rule to clarify its requirements by identifying in greater detail the washing or dry cleaning information to be included on care labels. 48 FR 22733 (1983). The Care Labeling Rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to attach care labels to these items stating ''what regular care is needed for the ordinary use of the product.'' (16 CFR 423.6(a) and (b)). The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. (16 CFR 423.6(c)).

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice (''FRN'') on June 15, 1994, 59 FR 30733. This FRN sought comment on the costs and benefits of the Rule, and related questions such as what changes in the Rule would increase the benefits of the Rule to purchasers and how those changes would affect the costs the Rule imposes on firms subject to its requirements. The comments in response to the 1994 FRN generally expressed continuing support for the Rule, stating that correct care instructions benefit consumers by extending the useful life of the garment, by helping the consumer maximize the appearance of the garment, and/or by allowing the consumer to take the ease and cost of care into consideration when making a purchase.

Based on this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule. The Commission published an ANPR on December 28, 1995, 60 FR 67102, which elicited 64 comments on the several possible amendments of the Rule described therein.[1] Based on the

[1] The comments were from: 41 consumers; one consumer group; four academics; one clothing retailer; one textile manufacturers association; one apparel manufacturers association; one professional cleaner; one professional cleaners association; one wet cleaning equipment manufacturer; two manufacturers of cleaning products; one cleaning products manufacturers association; one environmental protection group; one non-profit

Continued

comments and the evidence discussed herein, the Commission proposes to amend the Rule in the following ways.

Part B—Analysis of Proposed Amendments

1. Labeling for Home washing

a. Background and Discussion of Comments

The 1994 FRN noted that the Environmental Protection Agency (''EPA'') had been working with the dry cleaning industry to reduce the public's exposure to perchloroethylene (''PCE'' or ''perc''), the most common dry cleaning solvent,[2] and asked whether the Rule poses an impediment to this goal. The Rule currently requires either a washing instruction or a dry cleaning instruction; it does not require both. Thus, garments that can legally be labeled with a ''dry clean'' instruction alone also may in some cases be washable, a fact not ascertainable from such an instruction. The 1994 FRN asked about the extent of care labeling that fails to indicate both washing and dry cleaning instructions. Finally, the 1994 FRN asked whether the use of dry cleaning solvents would be lessened, and whether consumers and cleaners could make more informed choices as to cleaning method, if the Rule were amended to require both washing and dry cleaning instructions for garments cleanable by both methods. 59 FR 30733–34.

In the 1995 ANPR, the Commission analyzed the comments submitted in response to the 1994 FRN and proposed amending the Rule to ensure that consumers are provided with information that would allow them the choice of washing garments when possible. The Commission concluded that lack of such information can result in substantial injury to consumers in the form of unnecessary expense and/or the inability to use what they regard as a more environmentally friendly method of care. 60 FR 67104–05.

The ANPR asked for comment on an amendment of the Rule to require a home washing instruction for all covered products for which home washing is appropriate; providing dry cleaning instructions for such washable items would be optional. Manufacturers marketing items with a ''Dry Clean'' instruction alone would be required to substantiate both that the items could be safely dry cleaned and that home washing would be inappropriate for them (as the Rule currently requires them to do when providing a ''Dry Clean Only'' instruction). This proposal would not result in the additional substantiation testing (and increased PCE use) that the comments suggested a ''dual disclosure'' requirement could necessitate, because a dry cleaning instruction would be optional, as would the necessary substantiation to support it. *Id.* at 67105. That is, manufacturers labeling their goods for home washing (and possessing the appropriate substantiation for that instruction) would not have to also provide a dry clean instruction or have substantiation that dry cleaning would harm the garment.

Fifty-three comments addressed whether the Commission should require a home washing instruction for items that could be safely washed at home, and only three of those opposed the proposal.[3]

Eighteen commenters, including individual consumers, academics, and an appliance manufacturers' trade association, contended that many manufacturers currently label items that can be both washed and dry cleaned with a ''dry clean'' or ''dry clean only'' instruction.''[4] Many commenters stressed that knowing that garments can be washed at home would save them (or consumers in general) garment care dollars.[5] Two consumers stated that washing garments that are labeled ''dry clean'' or ''dry clean only'' but that appear washable (such as 100% cotton) is risky because, if the garment is ruined, the manufacturer will not stand behind it.[6] AHAM, a trade association for appliance manufacturers, noted that:

> the cost for testing a garment fabric sample for proper care instructions is just a fraction of the consumer expense experienced by many thousands of individuals incurring ongoing dry cleaning expenses for a garment that could be washed at home.[7]

Many commenters also noted that consumers believe there are environmental benefits from home washing rather than dry cleaning washable items.[8] Consumers Union stated, ''If only one method must appear on the label, it has to be the least expensive and the least hazardous to the consumer and the environment.''[9]

Three commenters recommended that both washing and dry cleaning instructions be included if both are appropriate.[10] Two comments specifically opposed this type of ''dual labeling,'' however, because of the increased levels of dry cleaning substantiation tests that would follow.[11]

Two commenters (one of which is an association for apparel manufacturers) argued that manufacturers (having made the items) are best qualified to make the decision as to how garments can best be cleaned and urged the Commission to leave apparel manufacturers the

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clearinghouse for information on emissions control; one home appliance manufacturers trade association; one manufacturer of home appliances; one home applicance repairman; one international association for textile care labeling; one federal agency; and the Economic Union of European Countries. The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, Washington, D.C. The comments are referred to in this Notice of Proposed Rulemaking (''NPR'') by their name and the number assigned to each submitted comment.

[2] Congress designated PCE as a hazardous air pollutant in Section 112 of the Clean Air Act; many state legislatures have followed suit under state air toxics regulations.

[3] Aqua Clean Systems, Inc. (''Aqua Clean'') (34) pp. 8–9; Center for Emissions Control (''CEC'') (44) pp. 5–6; American Apparel Manufacturers Association (''AAMA'') (57) p.2.

[4] Henry Gluckstern, Esq. (16) pp. 1–2; Bette Jo Dedic, University of Kentucky College of Agriculture Extension Service (''Univ. of KY'') (20) p. 1; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Margie Helton (38) pp. 1–2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; UCLA Pollution Prevention Education and Research Center (''UCLA PPERC'') (45) p. 3; Aileen Mills (47) p. 1; Association of Home Appliance Manufacturers (''AHAM'') (51) p. 2.; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebber (62) p. 1. But see Aqua Clean (34) p. 8: ''As a general observation, garments which can be home laundered or drycleaned are usually labeled with both care instructions.''

[5] Univ. of KY (20) p. 1; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Carolyn Powers (35) p. 1; Spencer and Diana Hart (36) p. 1; Margie Helton (38) pp. 1–2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; Aileen Mills (47) p. 1; Joyce Rash (48) p. 1; S.K. Taylor (49) p. 1; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebber (62) p. 1.

[6] Dana Dodson (4) p. 1; Margaret Petty (37) p. 1.

[7] AHAM (51) p. 2.

[8] Linda Smith, Tenn. State Univ. Cooperative Extension Program (3) p. 1; John & Elizabeth Gray (15) p. 1; Univ. of KY (20) p. 2; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Margie Helton (38) pp. 1–2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; Consumers Union (46) p. 2; Aileen Mills (47) p. 1; S.K. Taylor (49) p. 1; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebber (62) p. 1.

[9] Consumers Union (46) p. 2.

[10] International Fabricare Institute (''IFI'') (56) p. 2; Ginetex (the International Association for Textile Care Labeling) (63) p. 4; European Union (64) p. 3.

[11] Univ. of KY (20) p. 2; Consumers Union (46) p. 2. See also the discussion of ''dual disclosures'' in the ANPR:

> The Commission has learned from several commenters, primarily manufacturers, that requiring both washing and dry clean labels (a ''dual disclosure'' amendment) would require a dry cleaning instruction on virtually all washable items. According to these commenters, this would necessitate additional testing expenses for manufacturers and a resulting increase in PCE use, to the detriment of human health and the environment. (60 FR 67105, n. 30).

flexibility to decide which care instructions to use.[12] A third commenter in opposition to the proposal, a non-profit clearinghouse for information on emission control in chlorinated solvent applications, including dry cleaning, stated that there did not appear to be many instances of washable items being labeled ''dry clean.''[13]

b. Proposed Amendments and Reasons Therefor

Based on the comments, the Commission has reason to believe that ''dry clean'' labels on home-washable items are prevalent and that consumers have a preference for being told when items that they are purchasing can be safely washed at home. Moreover, the information about washability may be important to consumers for economic or environmental reasons, or both. Some consumers wish to avoid the use of PCE and clean in water when possible because they believe it is better for the environment. The record also supports the conclusion that this aspect of the Rule is an impediment to EPA's goal of reducing the use of dry cleaning solvents.[14]

When a garment that can be washed at home is labeled ''dry clean,'' many consumers may be misled into believing that the garment cannot be washed at home, and they may incur the unnecessary expense of dry cleaning the garment and/or potential damage to the environment that they wish to avoid.[15] Moreover, it can be extremely difficult for consumers to obtain the information about washability of an item for themselves. Although fiber content can be a guide to washability, other factors—such as the type of dye or finish used—can also determine washability, and consumers have no way of learning what dyes and finishes were used and whether they will survive washing.

Accordingly, the Commission proposes amending the Rule to require a home washing instruction for garments for which home washing is appropriate. This amendment would permit optional dry cleaning instructions for such washable items, provided dry cleaning would be an appropriate alternative cleaning method. The amendment would, however, require that manufacturers selling items with a ''dry clean'' instruction alone be able to substantiate both that the items could be safely dry cleaned and that home washing would be inappropriate for them.[16]

As noted in the comments, the proposed amendment would enable consumers to make a more informed purchasing choice and provide them with the option of saving money by washing at home instead of incurring the higher expenses of dry cleaning. In addition, consumers who are concerned about reducing the use of PCE will have information about the ''washability'' of all apparel items they are considering purchasing.

The Commission agrees, as it did in the ANPR, with the commenters (primarily manufacturers) that cautioned against a ''dual labeling'' instruction requiring both home washing and dry cleaning instructions if both methods are appropriate. Such an instruction would result in some manufacturers of traditionally washable products performing dry cleaning tests to substantiate that dry cleaning was an appropriate care method, which would be contrary to EPA's goal of reducing the use of dry cleaning solvents. Moreover, the comments do not indicate a consumer preference for such dual labeling. The Commission has no reason to believe at this time that it is either unfair or deceptive for a manufacturer or importer to fail to reveal that a garment labeled for washing can also be dry cleaned, and to require such dual labeling might raise costs without providing any real benefit to consumers.

The proposed amendments would permit a home washing instruction only for those covered products for which home washing—and traditional home finishing processes such as ironing—would be an appropriate method of care. Many commenters cautioned that, for some items that could be washed in water, there would be many additional finishing steps required for the garment that the average consumer could not perform at home. In the case of some garments, such as suits made from wool or silk (fibers that generally can be safely washed in water), post-home washing finishing processes like steampressing and pleat and crease setting are necessary for proper refurbishing. These processes are beyond the capabilities of most consumers and the equipment available to them.[17] Under the proposed amendments, a home washing instruction would not be appropriate or required for an item that could be safely washed in water with the proper cleaning agents but could not be finished properly at home by the average consumer. Moreover, the Commission recognizes that manufacturers have experience with the consumers who buy their garments, and the Commission would expect to defer to manufacturers' decisions in the case of garments that would be difficult to refurbish for some but not all consumers.[18]

2. The ''Professionally Wet Clean'' Instruction

a. Background and Discussion of Comments

The ANPR asked whether the Rule should be amended to recognize the new technology referred to as ''professional wet cleaning'' by requiring a professional wet cleaning instruction for products that cannot be washed at home but could be cleaned by means of this new technology.[19] (Professional wet cleaning uses computer-controlled washers and dryers to achieve precise control of mechanical action, fluid levels, temperatures, and other important factors.) The ANPR asked for information on the cost of wet cleaning, the availability of wet cleaning facilities, whether the process currently could serve as a practical alternative to dry cleaning, and whether fiber

[12] Aqua Clean (34) pp. 8–9; AAMA (57) p. 2, noting that ''There are some garments with 'dry clean only' labels that can be washed at home * * * but if the cleaning is not done correctly, it can lead to damage.

[13] CEC (44) p. 5.

[14] EPA's comment (73) to the 1994 FRN stated, at p. 1, that the Rule should be revised to require manufacturers to state whether a garment ''can be cleaned by solvent-based methods, water-based methods, or both. We believe this change is necessary to advance the use of water-based cleaning technology.'' EPA's comment to the 1995 FRN referred to the 1994 comment, and stressed the need for recognition in the Rule of professional wet cleaning. EPA (17) p. 1.

[15] A Perdue University survey found that 89.3% of the 962 respondents indicated that they would not wash a garment labeled ''dry clean.'' Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 423) (May 1978), p. 141. Other surveys showed similar results. *Id.* at 142–143.

[16] The Rule currently requires this level of substantiation for a ''dry clean only'' instruction. Under the proposed amendment, any garment for which home washing is not recommended and dry cleaning is recommended, would have to be labeled ''dry clean only.'' In other words, a ''dry clean'' instruction by itself would no longer be permissible.

[17] See Aqua Clean (34) pp. 8–9.

[18] In addition, manufacturers that wished to stress that a particular garment could be refurbished at home but might be difficult for some consumers to refurbish adequately at home could add a phrase such as ''For best results, dry clean.''

[19] In the narrative discussing this issue in the ANPR, the Commission sought information on the feasibility of a ''professionally wet clean'' instruction on ''all covered products bearing a dry cleaning instruction.'' 60 FR 67105. In the Request for Comments Section of the Notice, however, the Commission limited the applicability of the question to ''a garment that cannot be home laundered but can be dry cleaned.'' 60 FR 67107. Most of the commenters responded in the latter context.

identification should be on a permanent label. 60 FR 67105, 67107.

Twenty-nine commenters addressed the ''professionally wet clean'' instruction.[20] Only four opposed the proposal to amend the Rule to require a ''professionally wet clean'' instruction for wet cleanable garments that cannot be washed at home. The Soap and Detergent Association and Procter & Gamble contended that the term ''professionally wet clean'' may be confused with a home washing instruction by consumers.[21] The Center for Emissions Control contended that wet cleaning is a new technology that is neither well understood nor widely available, and that a required wet cleaning instruction now would therefore be unreasonable and counterproductive.[22] SDA, P&G, and CEC all recommended requiring some version of a ''professionally clean'' instruction that would encompass both dry cleaning and professionally wet cleaning.[23] CEC also suggested that eventually the Rule could provide for a ''professionally wet clean'' instruction that would be permitted, but not required, when the manufacturer thought professional wet cleaning would be appropriate.[24] AAMA opposed any provision in the Rule for professional wet cleaning on the ground that it is too new and that there are too few cleaners who can provide the service.[25]

(1) *Defining Professional Wet Cleaning.*[26] Six organizations provided information describing the wet cleaning process.[27] They defined ''machine wet cleaning'' or ''professional wet cleaning'' as an automatic, water-based cleaning process that relies on the use of sophisticated, computer-controlled washers and dryers in which the washing and drying cycles, including heat, moisture, and agitation, can be precisely controlled according to the requirements of the various fiber, fabric, and garment types.[28]

Three organizations provided information about the equipment used in professional wet cleaning.[29] UCLA PPERC and CNT said that five companies provide the equipment systems necessary for professional wet cleaning.[30] Aqua Clean provided a detailed description of the equipment needed to provide professional wet cleaning services:

> All professional wet cleaning systems consist of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer always uses a frequency-controlled motor, which allows the computer to precisely control the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation and extraction parameters, etc. The dryer always incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals which are on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act (TSCA).[31]

(2) *As an Alternative to Dry Cleaning.* The ANPR asked two related questions about the feasibility of wet cleaning as a practical alternative to dry cleaning, and the extent to which items that have historically been dry cleaned could successfully be professionally wet cleaned. Five commenters responded directly to the first question. ATMI and AAMA pointed out that, while the fibers and dyes now in use will stand up to the chemical solvents used in the dry cleaning process, the textile industry does not know if they will stand up to professional wet cleaning.[32] ATMI predicted that:

> If consumers just assume that they can use the new cleaning method on their existing wardrobe and current clothing purchases, we would expect to see an increase in apparel damage claims. This is because the fabrics used in these clothing items have finishes and formulations designed for dry cleaning. We told EPA that the industry would need a long phase-in time (2—3 years) to adjust our dyes and finishes to work compatibly with ''wet clean'' processes.[33]

Ginetex, which is responsible for the care labeling system used in European countries, indicated its interest in the wet cleaning technique, but said it is waiting for a standardized test method so manufacturers can test garments to determine whether wet cleaning would be a safe care method.[34] IFI cautioned that wet cleaning technology is new and stated its determination to undertake research into the process:

> The use of machine wet cleaning is still in the investigative or infant stage. The technology originated in Europe and the most extensive analysis of these systems has been completed by two European research groups—Hohenstein and FCRA. The conclusion of these studies is that machine wet cleaning is an adjunct to dry cleaning, not a complete replacement. The Environmental Protection Agency, as a result of its evaluation of wet cleaning under its Design for the Environment Program, concludes that machine wet cleaning is not a complete replacement for drycleaning. There is still much investigative work to be done in this area. To that end, IFI has formed a partnership with Greenpeace, other industry groups, and other environmental and labor groups to explore the possibilities of wet cleaning—The Professional Wet Cleaning Partnership.[35]

Aqua Clean estimated that 90% of garments can be safely and satisfactorily cleaned by professional wet cleaning. Aqua Clean stated that it has found no significant wetcleanability versus drycleanability differences applicable to wool, silk, rayon, acetate, linen, etc. with the exception of heavier wool suits, which are made with linings and shoulder pads that dry at a rate different from the wool, and thus require extra time.[36] CEC stated that estimates of the percentage of garments labeled ''dry clean only'' that can be successfully wet

[20] Joyce McCarter (14) p.1; John & Elizabeth Gray (15) p.1; Henry Gluckstern, Esq. (16) pp.1, 3; EPA (17) p.1; Linda Arant (18) p.1; Vera Rines (28) p.1; Thelma Carpenter (30) p.1; Ida Carpenter (33) p.1; Aqua Clean (34) pp. 6–7; Margie Helton (38) p.1; Jewell Brabson (40) p.1; American Textile Manufacturers Institute (''ATMI'') (41) p.3; Susan DuBois (42) p.1; The Soap and Detergent Association (''SDA'') (43) pp.1; 3; CEC (44) pp.1–2, 5; UCLA PPERC (45) pp.2–3; Consumers Union (46) pp.1–2; Center for Neighborhood Technology (''CNT'') (55) pp.2, 4; IFI (56) p.2.; AAMA (57) p.2; Teresa Mills (58) p.1; Sarah O'Neal (59) p.1; P&G (60) pp.2; 4; Frances McCarter (61) p.1; Gladys Bebber (62) p.1; Ginetex (63) p.3.

[21] SDA (43 pp.1, 3; Procter & Gamble (''P&G'') (60) pp.2, 4.

[22] CEC (44) p.5.

[23] SDA (43) pp.1, 3; CEC (44) pp.1–1, 5; P&G (60) pp.2, 4.

[24] CEC (4) p.5.

[25] AAMA (57) p.2.

[26] The ANPR noted that EPA had published a summary of an alternative cleaning process referred to as ''Multiprocess Wet Cleaning.'' 60 FR 67103 (Dec. 28, 1995). According to several commenters, ''multiprocess wet cleaning'' is a cleaning process that involves knowledgeable individuals hand-cleaning individual garments, often employing a ''spot cleaning'' technique rather than full immersion, and using water, heat, steam and natural soaps instead of perchloroethylene or petroleum solvents. Aqua Clean (34) pp.1–2, noting that ''Professional wet cleaning has already supplanted multiprocess wet cleaning. Indeed, those cleaners (Ecofranchising, NY; Cleaner Image, CT) which initially used multiprocess wet cleaning have converted to professional wet cleaning because of the economic advantages.'' See also CEC (44) p.4. Consequently, Multiprocess Wet Cleaning is not addressed in the remainder of this Notice.

[27] Aqua Clean (34) pp.1–2; CEC (44) p.4; UCLA PPERC (45) p.3; CNT (55) p.2; IFI (56) p.2; Ginetex (63) p.3.

[28] Aqua Clean (34) pp.1–2; UCLA PPERC (45) p.3.

[29] Aqua Clean (34) pp.2–3; UCLA PPERC (45) p.3; CNT (55) p.2.

[30] UCLA PPERC (45) p.3; CNT (55) p.2.

[31] Aqua Clean (34) pp.2–3.

[32] ATMI (41) p.3; AAMA (57) p.2.

[33] ATMI (41) p.3.

[34] Ginetex (63) p.3.

[35] IFI (56) p.2.

[36] Aqua Clean (34) p.4. Aqua Clean said that it has corresponded with the International Wool Secretariat (IWS), the research and marketing arm of the wool industry, and anticipates cooperating with the IWS's announced intention to develop wool processing technologies at the mill level that will make wool garments better suited to professional wet cleaning, so they can be dried faster at higher temperatures. *Id.* at 5.

cleaned vary from 30% to 70%, with industry experts narrowing that spread to 30% to 50%.[37] IFI contended that it is too early to estimate the percentage with any certainty, but stated that early indications are that the percentage of ''dry clean'' labeled garments that could be effectively machine wet cleaned could be anywhere from 25% to 75%.[38] CNT estimated, based on its own research and research conducted by Environment Canada, that from 30% to 70% of clothes generally cleaned in PCE could be safely cleaned using standard commercial or domestic laundering equipment.[39]

(3) *Businesses that Provide Wet Cleaning.* When it filed its comment in early 1996, Aqua Clean estimated that, by the end of 1996, approximately 350 businesses would have professional wet cleaning systems.[40] Three other commenters estimated that professional wet cleaning is currently being offered by 100 businesses.[41] CEC also estimated that it will be several years, even at best, before a substantial number of the nation's 30,000 cleaners have purchased professional wet cleaning technology.[42]

(4) *Costs to Consumers.* ATMI said that the additional costs incurred by textile and apparel manufacturers to substantiate a wet cleaning instruction would be passed on to consumers.[43] Both UCLA PPERC and CNT stated that the costs to consumers for wet cleaning services are comparable to the costs of dry cleaning.[44] CNT estimated that the range for wet cleaning a two-piece wool suit was from $4.50 to $9.00, and added that interviews with cleaners indicated that those who provided both types of cleaning were providing them for approximately the same cost, and that in no case were charges for wet cleaning higher than for dry cleaning.[45]

Aqua Clean said that it was not aware of any cleaner charging more for wet cleaning services than for dry cleaning services, and that in some cases the cost of wet cleaning is less, because many dry cleaners impose a surcharge (typically 50 cents) to cover the rising cost of disposing of hazardous dry cleaning waste.[46]

(5) *The Environmental Impact of the Process.* Aqua Clean and CNT stated that none of the substances used in the process are prohibited by EPA; further, Aqua Clean said that the only materials released into the environment in connection with the process are chemicals that appear on EPA's public inventory of approved chemicals under the Toxic Substances Control Act.[47] CEC suggested, however, that the primary environmental issue associated with the wet cleaning process is water consumption, because the process uses 2.5 gallons of water to clean a pound of clothes. CEC pointed out that, although this compares favorably to the 6 gallons per pound used by home clothes washers, the wet cleaning process uses more water than the dry cleaning process, which uses water primarily for cooling purposes, and typically recycles it.[48] UCLA PPERC stated that research suggests that wet cleaning is a safe alternative to dry cleaning.[49]

The Commission notes that it has not made an independent assessment of the environmental desirability of the various methods of cleaning textile wearing apparel. Rather, it has noted EPA's goal of reducing the use of dry cleaning solvents and the preference of numerous consumers for information about whether garments can be cleaned in water. The Commission has prepared a proposed Environmental Assessment in which it analyzed whether the amendments to the Rule were required to be accompanied by an Environmental Impact Statement. Because the main effect of the proposed amendments is to provide consumers with additional information rather than directly to affect the environment, the Commission concluded in the proposed Environmental Assessment that an Environmental Impact Statement is not necessary. The Commission requests comment on this issue. The Environmental Assessment is on the public record and is available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, Washington, D.C. It can also be obtained at the FTC's web site at http://www.ftc.gov on the Internet.

(6) *The Requirement for Fiber Identification on a Permanent Label.* Eight comments addressed the desirability of a requirement for fiber identification on a permanent label, and all favored the idea.[50] Five recommended that the fiber identification be on the same label as the care instructions.[51] Several commenters said that fiber information need not necessarily be on the care label but should be on a permanent label.[52] Most of the commenters said that cleaners need fiber identification information in order to provide the best cleaning services for their customers. Aqua Clean explained as follows:

> [F]abric identification [should] be on a permanent label because it is essential information for all cleaners regardless of the technology employed; requiring this by regulation will merely codify a nearly uniform practice at no measurable cost to manufacturers. A secondary consideration is that individuals with allergies to certain fibers (e.g., wool) should be provided with this information. It is clear that requiring fiber identification on a permanent label should be acceptable to manufacturers and consumers because it has already become an accepted part of business at all levels of manufacture, distribution, sales, and garment care.[53]

b. *Proposed Amendment and Reasons Therefor.* The comments show that professional wet cleaning is a process that is of interest to consumers, especially those who believe it has the potential for less negative impact on the environment than dry cleaning. Thus, the Commission is proposing amendments that will incorporate professional wet cleaning into the Rule's system of instructions for care.

Nevertheless, professional wet cleaning is a very new technology, and it does not appear to be widely available. Moreover, there is not a standardized test by which manufacturers can establish a reasonable basis for a professional wet

[37] CEC (44) p.4.

[38] IFI (56) p.2.

[39] CNT (55) p.2.

[40] Aqua Clean (34) p.3.

[41] UCLA PPERC (45) p.3; CNT (55) p.3; AAMA (57) p.2.

[42] CEC (44) p.5.

[43] ATMI (41) p.3.

[44] UCLA PPERC (45) p.4; CNT (55) p.4.

[45] CNT (55) p.4.

[46] Aqua Clean (34) p.5. Aqua Clean also raised an issue that was not addressed in the ANPR—consumer access to cleaning services:

> Many developers and owners of strip centers and shopping centers, which is where most consumers access cleaning services, are refusing to rent space to or renew leases for drycleaners. These landlords simply do not want to bear the legal exposure or insurance expense associated with drycleaning machines and their toxic waste stream. Aqua Clean Systems is currently negotiating with a major national shopping center owner to become their exclusive tenant for 100% perc-free cleaning facilities. At present, they refuse to allow a drycleaner in any of their 1,800 shopping centers. Similar discussions are taking place with a major chain in the Southeast. This trend will continue. If the Rule is not amended to accommodate professional wet cleaning, access to cleaning services will decline as regulatory and landlord pressures cause a decline in the number of drycleaners, which will eventually reduce competition and cause an increase in consumer prices. *Id.*, pp. 9–10.

[47] Aqua Clean (34) p.3; CNT (55) p.3.

[48] CEC (44) p.3.

[49] UCLA PPERC (45) p.4.

[50] Univ. of KY (20) p. 1; Aqua Clean (34) p. 7; ATMI (41) p. 4; CEC (44) p. 2; UCLA PPERC (45) p. 3; Consumers Union (46) p. 2; AHAM (51) p. 2; P&G (60) p. 4.

[51] CEC (44) p. 2; UCLA PPERC 945) p. 3; Consumers Union (46) p. 2; AHAM (51) p. 2; P&G (60) p. 4.

[52] Univ. of KY (20) p. 1; Aqua Clean (34) p. 7.

[53] Aqua Clean (34) p. 7.

cleaning instruction.[54] For these reasons, the Commission is not at this time proposing an amendment to the Rule that would require a wet cleaning instruction. Instead, the Commission is proposing amendments that would add a definition to the Rule for ''professional wet cleaning'' and would permit manufacturers to include a ''professionally wet clean'' instruction on labels for those items for which they have a reasonable basis for a professional wet cleaning instruction. The proposed amendments do not require manufacturers who label items with a ''dry clean only'' instruction to be able to substantiate that professional wet cleaning would be an inappropriate method of care.

The Commission also concludes that fiber identification on a permanent label is important to professional wet cleaners.[55] The record contains numerous references to the need for precise fiber content information due to the complexity of the computer-controlled equipment used in the wet cleaning process. Therefore, the proposed amendment requires that, if a care instruction recommends professional wet cleaning, the fiber content must be provided on the permanent care label along with the care instructions. The Commission seeks comment as to whether any accompanying change should be made to the Textile Rules.[56]

Finally, it should be noted that at this time, the Commission proposes allowing a ''professional wet clean'' instruction along with a conventional care instruction because many consumers do not currently have access to professional wet cleaners. Nevertheless, because professional wet cleaning appears to be growing rapidly, the Commission seeks comment on this point.

3. The Reasonable Basis Requirement of the Rule

a. *Background and Discussion of Comments*

The Rule requires that manufacturers and importers of textile wearing apparel possess, prior to sale, a reasonable basis for the care instructions they provide. Under the Rule, a reasonable basis must consist of reliable evidence supporting the instructions on the label. 16 CFR 423.6(c). Specifically, a reasonable basis can consist of (1) reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) other reliable evidence. *Id.*

The 1994 FRN solicited comment on whether the Commission should amend the Rule to conform with the interpretation of ''reasonable basis'' described in the FTC Policy Statement Regarding Advertising Substantiation, (''Advertising Policy Statement'') 104 F.T.C. 839 (1984), or to change the definition of ''reasonable basis'' in some other manner. The comments in response to the 1994 FRN suggested that a significant number of care labels lack a reasonable basis. Based on these comments, the ANPR proposed amending the reasonable basis requirement to reduce the incidence of inaccurate and incomplete labels. The ANPR sought comment on that incidence, the extent to which it might be reduced by clarifying the reasonable basis standard, and the costs and benefits of such a clarification.

The Commission further solicited comment on whether to amend the Rule to clarify that the reasonable basis requirement applies to a garment in its entirety rather than to each of its individual components. In addition, the Commission asked for comment on whether the Rule should specify standards for determining acceptable and unacceptable changes in garments following cleaning as directed, and whether the Rule should identify properties, such as colorfastness and dimensional stability, to which such standards would apply.

The ANPR sought comment on the option of indicating in the Rule that whether one or more of the types of evidence described in Section 423.6(c) constitutes a reasonable basis for care labeling instructions depends on the factors set forth in the Advertising Policy Statement and whether the Rule should be amended to make testing of garments the only evidence that could serve as a reasonable basis under certain circumstances. Finally, the ANPR sought comment on whether the Rule should specify particular testing methodologies to be used. Ten commenters responding to the ANPR discussed the reasonable basis provision.[57] Seven supported the modification of the Rule, arguing that the provision should be clarified and strengthened to reduce mislabeling.[58] Two maintained that the reasonable basis provision should not be amended, because the proposed changes would likely increase the cost to consumers and apparel firms without materially increasing the benefits to consumers.[59]

Only two commenters provided data on the incidence of mislabeling. Both concluded that there is a high incidence of inaccurate and/or incomplete labeling. IFI cited statistics from its Garment Analysis database (which, in 1995, consisted of 25,160 damaged garments) indicating that inaccurate care labels were responsible for 40% of the damaged garments.[60] Clorox concluded from its own study that 70% of all home washing instructions provide inaccurate bleach information.[61]

ATMI, however, stated that most home washing labels are accurate, and that the vast majority of dry clean instruction labels are accurate, despite limited problems associated with care instructions for special items such as beaded apparel, sequins, and leather appliques.[62] ATMI and AAMA both

[54] Testing is one of several types of evidence that can serve as a reasonable basis for a care instruction.

[55] The Textile Fiber Products Identification Act (''Textile Act''), 15 U.S.C. 70 *et seq.*, requires marketers of covered textile products to mark each product with the generic names and percentages by weight of the constituent fibers present in the product. The Commission has issued Rules and Regulations under the Textile Act (''Textile Rules''). Rule 15 of the Textile Rules, 15 CFR 303.15, allows any type of label to be used as long as the label is securely affixed and durable enough to remain attached to the product until the consumer receives it; Rule 15 does not require a permanent label.

[56] Rule 16 of the Textile Rules, 16 CFR 303.16, requires, with some exceptions, that all information required by the Textile Act shall be set out on one label, and on the same side of the label. The Commission recently sought comment on modifications of the Textile Rules. 61 FR 5344 (Feb. 12, 1996).

[57] Univ. of KY (20) p.2; Clorox (31) pp. 4–5; ATMI (41) pp. 5–7; SDA (43) pp. 1,3; Consumers Union (46) pp. 2–3; AHAM (51) p.2; IFI (56) p. 3; AAMA (57) p. 2; P&G (60) p. 5; Ginetex (63) p.4.

[58] Univ. of KY (20) p. 2; Clorox (31) pp. 4–5; SDA (43) pp. 1,3; Consumers Union (46) pp. 2–3; AHAM (51) p. 2; IFI (56) p. 3; P&G (60) p. 5.

[59] AAMA (57) p. 2; ATMI (41) pp. 5–7. Ginetex, the European care labeling organization, stated that it gives technical advice ''to give indications how to test in the case of uncertainty to choose the correct care label.'' Ginetex (63) p. 4.

[60] IFI (56) p.3.

[61] Clorox (31) p.2.

[62] ATMI (41) p.5. See also AAMA (57) p.3 (''There are a few problems with leather patches and some other materials attached to garments.'') The Commission has litigated one case involving inaccurate care instructions that resulted in damage to garments. *FTC* v. *Bonnie & Company Fashions, Inc. and Bonnie Boerer,* Civ. Action No. 90–4454) (D.N.J.). In addition, since that litigation, the Commission has obtained five settlements that alleged violation of the Rule due to inaccurate care instructions; in three of those five settlements, the Commission alleged that the trim on the garments was damaged when cleaned.

stated that the costs to consumers of complaining to manufacturers or retailers about garments damaged in cleaning is minimal, usually consisting of returning that item to the store, a telephone call, or postage for mailing a letter.[63] Moreover, according to both commenters, garment or piece goods manufacturers generally offer refunds for products damaged in cleaning despite adherence to care label directions if numerous consumers complain about an item.[64]

Several commenters specifically addressed whether the Rule should require testing as a reasonable basis in certain situations. Two commenters argued that testing should be the only permissible reasonable basis.[65] Clorox stated that tests performed on a representative sample of each garment are ''the most reliable evidence of care instruction accuracy,'' and that textbooks and manuals should not be allowed as evidence of a reasonable basis.[66] Clorox maintained that such a requirement would place little additional expense on manufacturers because ''published tests on specific fabric and dye combinations are already shared among the trade.''[67]

Two commenters, ATMI and AAMA, however, opposed such an amendment to the Rule.[68] ATMI expressed its concern that a testing requirement would substantially increase the prices for apparel and home furnishing items.[69] AAMA noted that its members already test new styles and fabrics for use in garments; thus, it is unaware of any garments which ''would need a legal requirement to be tested.''[70]

A number of commenters discussed whether the rule should specify testing methodologies to be used. Consumers Union asserted that the Rule should specify test methods that relate to consumer expectations, assessing ''product performance after repeated cleaning, shrinkage, colorfastness, appearance retention, and at least one fabric strength test.''[71] In contrast, AAMA contended that requiring specific test methods may impede the introduction of new fibers and fabrics.[72]

Several commenters responded to the Commission's questions relating to whether the Rule should require a reasonable basis for a whole garment versus each component. Three commenters maintained that the Rule should require a reasonable basis for a garment in its entirety.[73] IFI noted that its database shows that ''a large portion of the garments damaged are the result of the trim or component part of the garment failing in a specified care procedure.''[74] Consumers Union also argued that ''to state an instruction that excludes its applicability to garment trim is not often practical as some trim are hard to remove and reposition after cleaning.''[75]

Two commenters stated that the Rule should not require testing on a complete garment.[76] AAMA asserted that many garments are made of just one major fabric. Accordingly, there may not be a need to test an entire garment, as opposed to the materials used, if the other materials used in the garment are of the same fiber and basic construction.[77] Moreover, AAMA argued that it is sufficient for manufacturers to specify in care instructions that a specific trim is excluded, because consumers are thereby warned that care must be taken when refurbishing the garment.[78] ATMI stated that testing of completed garments would significantly raise the cost of manufacturing apparel, but noted that trim should be covered by the Rule, and that manufacturers should be responsible for selecting and combining component materials that can be refurbished together.[79]

Many commenters responded to the Commission's request for comments on whether the Rule should refer to performance standards, concluding that it may not be feasible for the Rule to do so. Consumers Union, for example, noted that because fabrics and apparel items are continually offered and discontinued, it may not be possible for the Commission to set performance standards in a timely fashion to cover all properties and types of garments.[80] AAMA asserted that although there is ''reason to look at minimum performance standards, including colorfastness, abrasion resistance, etc.,'' the Commission should not modify the reasonable basis requirement until the United States, Mexico and Canada have harmonized their labeling standards.[81]

Finally, two commenters stated that the Commission would improve the effectiveness of the Rule by incorporating the criteria from the Advertising Policy Statement.[82]

b. Proposed Amendments and Reasons Therefor

Section 423.6(c)(3) of the Rule currently states that a manufacturer or importer establishes a reasonable basis for care information by ''possessing prior to sale: [r]eliable evidence * * * for each component part of the product.'' Based on its review of the comments, the Commission proposes to amend the reasonable basis standard to make clear that the reasonable basis requirement applies to the garment in its entirety rather than to each of its individual components. The Commission believes that the record establishes that in some cases care instructions may not be accurate for the entire garment. A garment component that may be cleaned satisfactorily by itself might, for example, bleed onto the body of a garment of which it is a part. Thus, in the proposed Rule, Section 423.6(c)(3) has been amended to clarify that a manufacturer must possess a reasonable basis for the garment as a whole, including any trim.[83] Proposed Section 423.6(c)(3) provides that ''Reliable evidence * * * for each component part of the product, in conjunction with reliable evidence for the garment as a whole'' can constitute a reasonable basis for care instructions. The proposed Rule does not require testing of the entire garment if there is an adequate reasonable basis for the garment as a whole without such testing; the proposed change would clarify, however, that testing of separate components is not necessarily sufficient if problems are likely to occur when the components are combined.[84]

[63] ATMI (41) p.7; AAMA (57) p.4. But see Univ. of KY (20) p.2 (consumers may not complain to stores because they are intimidated or do not think their problems will be resolved).

[64] ATMI (41) p.7 (noting that if only one consumer complains about an item ''of which thousands were produced, it is likely that the damage was caused by a commercial cleaner or by the consumer''); AAMA (57) p.4.

[65] IFI (56) p. 3; Clorox (31) pp. 4–5.

[66] Clorox (31) p. 4.

[67] *Id*.

[68] ATMI (41) p. 5; AAMA (57) p. 3.

[69] ATMI (41) p. 7.

[70] AAMA (57) p. 3.

[71] Consumers Union (46) p. 2.

[72] AAMA (57) p. 3.

[73] Univ. of KY (20) p. 2; Consumers Union (16) p. 3.; IFI (56) p. 3.

[74] IFI (56) p. 3.

[75] Consumers Union (46) p. 3.

[76] AAMA (57) p. 4; ATMI (41) pp. 5–6.

[77] AAMA (57) p. 4.

[78] *Id*.

[79] ATMI (41) p. 6.

[80] Consumers Union (46) p. 2 (suggesting that the FTC implement a rule that requires manufacturers, retailers, and importers to issue refunds for products damaged in cleaning despite adherence to the label).

[81] AAMA (57) p. 2.

[82] SDA (43) p. 3; P&G (60) p. 5 (also suggesting that the Commission consider methods of certification and other tools such as U.S. Customs requirements to reduce the number of mislabeled imported goods, especially those labeled ''Dry Clean Only.'')

[83] The Commission notes that an instruction to clean ''exclusive of trim'' is only a valid care instruction if the trim can be easily removed and easily reattached.

[84] For example, red trim that is to be placed on white fabric should be evaluated to determine if it

Continued

The Commission, however, believes that the comments do not provide sufficient reason to propose modifying other aspects of the reasonable basis provision at this time. As noted by the AAMA, the United States, Mexico, and Canada are in the process of harmonizing their labeling requirements. Until this harmonization is complete, the Commission believes that further modification of the reasonable basis provision may be premature.

4. Definitions of Water Temperatures

a. *Background and Discussion of Comments*

The Rule currently requires that a care label that recommends washing must also state a water temperature that may be used unless ''the regular use of hot water will not harm the product.'' 16 CFR 423.6(b)(1)(i). The Rule also provides that if the term ''machine wash'' is used with no temperature indication, ''hot water up to 150 degrees F (66 degrees C) can regularly be used.'' 16 CFR 423.1(d). This definition is repeated in Appendix 1.a. ''Warm'' is defined in Appendix 1.b. as ranging from 90 to 110 degrees F (32 to 43 degrees C), and ''cold,'' in Appendix 1.c., as cold tap water up to 85 degrees F (29 degrees C).

Some comments to the 1994 FRN recommended that the Commission revise the definition of cold water. Commenters noted that tap water temperatures vary across the United States, and that such differences can cause problems because, in the winter in colder parts of the country, detergents may not fully activate during a cold wash cycle. Other comments suggested that the Rule's definition of hot water should be changed. The American Association of Textile Chemists and Colorists (''AATCC'') commented that the temperatures stated in the Appendix should be changed to match the AATCC definitions, which the AATCC believes ''more accurately reflect current washing machine settings and consumer practice.'' [85] The AATCC defines ''hot'' as 120 degrees F plus or minus 5 degrees (49 degrees C plus or minus 3 degrees).

The ANPR sought comment on whether the Commission should amend the Rule to change the definitions of ''warm'' and ''hot'' water, or to include a new term such as ''cool'' or ''lukewarm'' in the Appendix. The Commission further sought comment on whether the Rule should be amended to state that care labels recommending ''cold'' wash must define the highest acceptable temperature for ''cold'' on the label, and on the benefits and costs to consumers and manufacturers of such an amendment.

All eleven comments received in response to the ANPR that discussed the definitions of cold, warm, and hot water favored some change.[86] ATMI stated that it is very important that the Rule's water temperature definitions be consistent with those used in standard test methods developed by AATCC because those test methods are used by the textile and apparel industries.[87] Six of the commenters also supported the idea of including a numerical temperature on the care label.[88] Consumers Union, for example, stated that consumers need to know the actual range of water temperature in which they can safely wash their clothes.

> Words such as lukewarm, cold, warm or hot serve their purposes only if the consumers are aware of safe water temperature ranges. Testing laboratories have assigned temperature ranges onto each of these words. They use these ''safe temperature ranges'' to test products for durability to repeated cleaning. Consumers should know what these safe water temperature ranges are.[89]

(1) *Definition of cold water.* As noted, six commenters favored the inclusion of a numerical temperature on the care label. Two others favored a numerical temperature when the label recommends a ''cold'' wash. SDA noted that in northern locations in winter, cold water washes can be as cold as 40 degrees F and that ''the performance of all laundry products is seriously diminished if they are used in water temperatures below 60 degrees F.'' [90] SDA suggested the following care instruction, in lieu of ''cold'':

> Wash in the warmest available water, not to exceed (approximate temperature) degrees F.

Maytag suggested that a range of 65 to 80 degrees F should be stated on the care label because

> consumers are not aware that water can be too cold to activate detergents, thus they experience poor cleaning and other laundry problems. By incorporating a temperature range consumers would know exactly what temperatures will provide good results. [91]

P&G said that a national consumer study it had conducted showed that 78% of ''cold'' loads washed in January and February were in temperatures below 65 degrees F (with some as low as 34 degrees F), and that, year round, 50% of ''cold'' loads were washed in temperatures below 65 degrees F.[92]

ATMI suggested that ''cold'' be defined consistently with the definition specified in AATCC test methods [27 degrees C plus or minus 3 degrees, or 82 degrees F plus or minus 5 degrees] and with standards developed by the American Society for Testing and Materials (''ASTM'') [30 degrees C, or 86 degrees F].[93]

(2) *Definition of warm water.* Section 1.b of the Appendix to the Rule defines warm water as 90 to 110 degrees F (32 to 42 degrees C). Several commenters recommended maintaining this definition, but adding the term ''lukewarm,'' defined as 70 to 89 F (21 to 31 C).[94] Other commenters opposed ''lukewarm,'' stating that it would be confusing to consumers because washing machine dials only offer the choices of cold, warm, and hot.[95] ATMI suggested a definition of 40 degrees C plus or minus 5 degrees (104 degrees F plus or minus 9 degrees), which it described as consistent with the definition established by AATCC for use in garment testing [41 degrees C plus or minus 3 degrees, or 106 degrees F plus or minus 5 degrees] and by ASTM in its standards [40 degrees C or 104 F].

(3) *Definition of hot water.*

Maytag stated that ''the current definition of hot water as up to 150 degrees is unrealistic due to scald laws in some states'' and because new water heaters are preset at 120 degrees F.[96] P&G also noted that hot water heaters are now usually preset at 120 F, ''much less than the 140 degrees F of older models.'' [97] SDA estimated that ''20% of today's homes have hot water heaters set at 120–125 F.'' [98] Maytag favored

is likely to bleed onto the surrounding fabric. A company may possess reliable evidence—for example, past experience with particular dyes and fabrics—that a particular red trim does not bleed onto surrounding fabric. In such a case testing of the entire garment might not be necessary.

[85] Comment 34 to 1994 FRN, p. 1.

[86] Bruce Fifield (22); ATMI (41); SDA (43); Consumers Union (46); AHAM (51); Maytag Appliances (''Maytag'') (53); IFI (56); AAMA (57); P&G (60); Ginetex (63); European Commission (64).

[87] ATMI (41) p.1.

[88] Fifield (22) p.1; Consumers Union (46) p.1.; AHAM (51) p.1; AAMA (57) p.1; European Commission (64) p.2; Ginetex (63) p.2. In a meeting with staff on August 7, 1996, AHAM indicated that it no longer favors this.

[89] Consumers Union (46) p.1.

[90] SDA (43) p.2. P&G (60) stated, at p.3, that ''all detergency and cleaning performance decreases substantially in cold water below 70 degrees F.''

[91] Maytag (53) p.2.

[92] P&G (60) p.3.

[93] ATMI (41) p.2.

[94] SDA (43) p.2; P&G (60) p.2.

[95] ATMI (41) p.1; AHAM (51) p.2; Maytag (53) p.1; AAMA (57) p.1.

[96] Maytag (53) p. 2; see also SDA (43) p. 2, P&G (60) p. 2.

[97] P&G (60) p. 3.

[98] SDA (43) p. 2.

defining hot as 120 to 140 degrees F, and SDA and P&G favored defining hot as 111 to 140 F. ATMI recommended 50 degrees C plus or minus 5 degrees C, which it described as consistent with definitions used by AATCC [49 degrees C plus or minus 3 degrees C, or 120 F plus or minus 5 degrees F] and ASTM [50 C or 122 F].[99]

Several commenters argued for the addition of ''very hot.''[100] P&G noted that some American consumers will be able to achieve the higher temperatures ''as new washing machines from Europe with onboard heaters enter the U.S.''[101] IFI noted that professional laundries can achieve the higher temperatures, and that the higher temperatures are necessary to clean certain types of clothes, such as men's dress shirts.[102]

b. *Proposed Amendments and Reasons Therefor*

The Commission believes that the definition of cold, warm, and hot water should be changed because of changes in settings on hot water heaters and in consumer washing practices in the years since the definitions were established. The AATCC has changed its definitions, which are used in textile testing, to take account of these factors, and AATCC test methods are used by much of the apparel industry. Consequently, the Commission believes that the definitions in the Rule should be changed to be consistent with the definitions used by AATCC. The Commission proposes changing the upper range of temperature definitions in the Rule to the upper range of what is allowed in tests published by AATCC. Thus, the upper range for ''cold'' would be 30 degrees C (86 degrees F); for ''warm,'' 44 degrees C (111 degrees F); and for hot, 52 degrees C (125 degrees F).

Finally, the Commission proposes adding the term ''very hot'' to the rule, defined consistently with the AATCC definition, *i.e.*, with an upper range of 63 degrees C (145 degrees F). The comments indicate that some garments do need to be cleaned at temperatures higher than 125 degrees F, and that some consumers have access to water hotter than 125 degrees F, either at home or through laundering by professional cleaners. The addition of the term ''very hot,'' together with appropriate consumer education, should give notice to those consumers whose hottest water is 120 degrees F that they may have to have garments that should be cleaned in very hot water professionally laundered. The Commission is aware, however, that the term ''very hot'' may be confusing to some consumers because most washing machine dials only offer the choices of ''cold,'' ''warm,'' and ''hot.'' The Commission requests comment on this issue, and, in particular, on suggestions for methods of consumer education to alleviate this problem.

In addition, some comments indicate that consumers need more precise information in order to select the appropriate temperature setting on their washing machines. Consumers may be using water that is too cold to activate detergents. Similarly, the addition of a precise temperature (52 degrees C, 125 degrees F) after the word ''hot'' on the care label of a garment might give those consumers some notice that their hot water may be too hot for that garment.[103] An upper range for ''warm'' might also be helpful to consumers because on many machines the dial setting for warm simply produces a mixture of hot and cold, and if the incoming tap water is very cold, the water in the machine may be too cold to produce optimal cleaning of the clothes being washed.

The Commission does not believe, however, that the solution to these problems at this time is to require numerical temperatures on care labels. Such additional information may not be cost-effective because most American consumers do not know the temperature of the tap water entering their homes or the cold or warm water in their washing machines. Indeed, some may also lack precise information about the temperature of the hot water heated by their water heaters, and, even those who know the upper limit of their hot water may not know the temperature of the hot water that enters their washing machines given the heat loss that occurs as water is piped to washing machines.

Therefore, at this time the Commission is not proposing to modify the Rule to require that precise temperatures be listed on care labels. The Commission is interested, however, in non-regulatory solutions to this problem. Accordingly, this notice asks questions about the possibility of a consumer education campaign on these issues. The Commission solicits comment on the feasibility of such a consumer education campaign, the form it should take, and industry members and consumer groups that would be interested in participating. Moreover, should the comments provide additional information about how numerical temperatures on care labels could be of use to American consumers, the Commission is willing to reconsider that issue.

The following changes are proposed in the definitions Section of the Rule and in the Appendix to the Rule.

Section 6.(b)(1)(I) of the Rule would be modified to read as follows:

> The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as cold, warm, hot, or very hot—that may be used. However, if the regular use of very hot water will not harm the product, the label need not mention any water temperature. [For example, ''Machine wash'' means very hot, hot, warm or cold water can be used.]

The last sentence of Section 1(d) of the Rule would be modified to read as follows:

> When no temperature is given, e.g., ''warm'' or ''cold,'' very hot water up to 145 degrees F (63 C) can be regularly used.

''Hot'' water would be defined in Appendix 1.a as ranging from 112 to 125 degrees F [45 to 52 degrees C], ''warm'' water would be defined in Appendix 1.b as ranging from 87 to 111 degrees F [31 to 44 degrees C], and ''cold'' water would be defined in Appendix 1.c as ranging up to 86 degrees F [30 degrees C]. In addition, ''very hot'' water would be defined in Appendix 1.a as ranging from 126 to 145 degrees F [53 to 63 degrees C].

The Commission seeks comment on these proposed changes, their importance to consumers, the necessity for a consumer education campaign to help consumers understand and use information about water temperature, and the form such a campaign might take.[104]

Part C—Rulemaking Procedures

The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has

[99] ATMI (41) p. 1.

[100] ATMI (41) p. 1.

[101] P&G (60) p. 3.

[102] P&G (60) p. 3.

[103] Although new water heaters are being set at lower temperatures, the comments indicate that many homes still have older heaters that produce water at 140 degrees F or even hotter. A garment that has been tested in water heated to 125 degrees F may withstand washing in that temperature without damage but nevertheless be damaged by water at 140 degrees F.

[104] Some companies have already begun to educate consumers about these issues. A consumer chart prepared by Maytag, with numerical definitions for hot, warm, and cold water, states, ''The clothes washer will not ensure these temperatures because the actual water temperatures entering the washer are dependent on water heater settings and regional water supply temperatures. For example, cold water entering the home in the northern states during winter may be 40 degrees F which is too cold for effective cleaning. The water temperature in this situation will need to be adjusted by selecting a warm setting or adding some hot water to the fill.''

decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking, and disputed issues will not be designated.

The Commission will hold a public workshop conference to discuss the issues raised by this NPR. Moreover, if comments in response to this NPR request hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will also hold such hearings. After the public workshop, the Commission will publish a notice in the **Federal Register** stating whether hearings will be held in this matter, and, if so, the time and place of hearings and instructions for those desiring to present testimony or engage in cross-examination of witnesses.

Part D—Section-By-Section Description of Proposed Amendments

1. Amendments Relating to Required or Permissible Care Instructions

The Commission proposes to amend section 423.1, ''Definitions'' to include the following definition:

(h) *Professional wet cleaning* means a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer uses a frequency-controlled motor, which allows the computer to control precisely the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation, and extraction parameters. The dryer incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act.

The Commission proposes to amend section 423.6(b) of the Rule to read as follows:

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a dry cleaning instruction. If an item of textile wearing apparel can be successfully washed and finished by a consumer at home, the label must provide an instruction for washing. If a washing instruction is not included, or if washing is warned against, the manufacturer or importer must establish a reasonable basis for warning that the item cannot be washed and adequately finished at home, by possessing, prior to sale, evidence of the type described in paragraph (c) of this section. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a dry cleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. An instruction for professional wet cleaning may also be given. If an instruction for professional wet cleaning is given, it must comply with the requirements set forth in paragraph (b)(3) of this section. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed both by washing and by dry cleaning, the label might say, ''Do not wash—do not dry clean,'' or ''Cannot be successfully cleaned.''] The instructions for washing, dry cleaning, and professional wet cleaning are as follows:

It should be noted that, in addition to the additions to section (b) noted in bold, the following sentence has been deleted: ''If either washing or dry cleaning can be used on the product, the label need have only one of these instructions.''

The Commission also proposes to add the following subsection to section (b).

(3) Professional wet cleaning.

If a professional wet cleaning instruction is included on the label, it must state at least one type of professional wet cleaning equipment that may be used to clean the garment. However, if the product can be successfully cleaned by all commercially available types of professional wet cleaning equipment, the label need not mention any type of wet cleaning equipment. A care label that recommends professional wet cleaning must list the fiber content of the garment and must recommend one other method of cleaning, such as washing or drycleaning, or must warn that the garment cannot be washed or drycleaned if such is the case.

2. Amendment of Reasonable Basis Section

The Commission proposes to amend § 423.6(c)(3) as follows:

(c) A manufacturer or importer must establish a reasonable basis for care information by possessing prior to sale:

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole;

3. Amendment of Definitions of Water Temperatures

The Commission proposes to amend the last sentence of § 423.1(d) of the Rule to read as follows:

When no temperature is given, e.g., ''warm'' or ''cold,'' very hot water up to 145 degrees F (63 C) can be regularly used.

The Commission proposes to amend section 423.6(b)(1)(I) of the Rule to read as follows:

The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as cold, warm, hot, or very hot—that may be used. However, if the regular use of very hot water will not harm the product, the label need not mention any water temperature. [For example, ''Machine wash'' means very hot, hot, warm or cold water can be used.]

The Commission proposes that Appendix A.1.a–1.c be modified to read as follows:

1. Washing. Machine Methods:

a. Machine wash—a process by which soil may be removed from products or specimens through the use of water, detergent, or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., ''warm'' or ''cold,'' very hot water up to 145 degrees F (63 degrees C) can be regularly used.

b. Hot—initial water temperature ranging from 112 to 125 degrees F [45 to 52 degrees C].

c. Warm—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].

d. Cold—initial water temperature up to 86 degrees F [30 degrees C].

Part E—Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national

economy, on the cost of textile wearing apparel or piece goods, or on covered businesses or consumers. The Commission, however, requests comment on these effects.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses.[105] The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Care Labeling Rule covers manufacturers and importers of textile wearing apparel and certain piece goods, the Commission believes that any amendments to the Rule may affect a substantial number of small businesses. For example, unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration (''SBA'') show there are some 288 manufacturers of men's and boys'' suits and coats (SIC Code 2311), more than 75% of which qualify as small businesses under applicable SBA size standards.[106] There are more than 1,000 establishments manufacturing women's and misses' suits, skirts, and coats (SIC Code 2337), most of which are small businesses. Other small businesses are likely covered by the Rule.

Nevertheless, the proposed amendments would not appear to have a significant economic impact upon such entities. The amendment to allow for labeling for professional wet cleaning simply provides an option that can be taken advantage of by businesses if they wish. The amendment to require that garments that can be safely washed at home be labeled for home washing will also not add significantly to the cost of compliance for most businesses because businesses will still only be required to provide instructions for one method of cleaning. It is true that those businesses that currently label garments for dry cleaning without investigating whether they can be washed at home would have to make that determination. Most businesses, however, obtain information about the washability of the components of their garments from the sources of those components, and in many cases this simple inquiry will provide a reasonable basis for either a dry clean instruction or a home washing instruction. Although some businesses may have to engage in additional efforts, such as testing, to make this determination, it does not seem likely that this will be the case for most businesses. The Rule specifies that a reasonable basis can consist of various types of reliable evidence other than testing, and most businesses do not routinely test each garment style they manufacture or import. Nevertheless, the Commission specifically seeks comment regarding these amendments' potential impact on small businesses.

In addition, the Commission is proposing to amend one category of the types of evidence that can constitute a reasonable basis, *i.e.*, evidence of testing of components of the garment, to clarify that the manufacturer or importer must also have reliable evidence that the garment as a whole can be cleaned as directed without damage. The Commission specifically has indicated that testing of the garment as a whole is not required in all instances, however; what is required is an evaluation of whether the garment as a whole can be successfully cleaned without damage in the manner recommended on the care label. The Commission views the amendment of this section of the Rule as simply a clarification of the fact that the manufacturer or importer must have a reasonable basis for the garment as a whole, not simply for the separate components.

Based on available information, the Commission certifies that amending the Care Labeling Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part F—Paperwork Reduction Act

The Rule contain various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget Control Number 3084–0103. As noted above, the Rule requires manufacturers and importers of textile wearing apparel to attach a permanent care label to all covered items and requires manufacturers and importers of piece goods used to make textile clothing to provide the same care information on the end of each bolt or roll of fabric. These requirements relate to the accurate disclosure of care instructions for textile wearing apparel. Although the Rule also requires manufacturers and importers to base their care instructions on reliable evidence, it does not contain any explicit recordkeeping requirements.

The Rule also provides a procedure whereby a member of the industry may petition the Commission for an exemption for products that are claimed to be harmed in appearance by the requirement for a permanent label, but only one petition, subsequently withdrawn, has been filed in recent years. A Notice soliciting public comment on extending the clearance for the Rule through December 31, 1999, was published in the **Federal Register** on August 26, 1996, 61 FR 43764. OMB has extended the clearance until December 31, 1999.

The proposed amendments would not increase the paperwork burden associated with these paperwork requirements. The Commission's proposed amendment regarding professional wet cleaning does not increase the paperwork burden because it is optional. Businesses that do not believe it is beneficial to label for professional wet cleaning are not required to do so. The proposed amendment of the Rule to require that any garment or fabric that can be washed at home be so labeled will not increase the burden for businesses because they will still need to label for only one method of cleaning.

The proposed amendment to change the numerical definition of the words ''hot,'' warm,'' or ''cold,'' when they appear on care labels, and to add the term ''very hot,'' will not add to the burden for businesses because they are already required to indicate the temperature in words and to have a reasonable basis for whatever water temperature they recommend. Moreover, businesses are not burdened with determining what temperature should accompany the words ''very hot,'' ''hot,'' ''warm,'' or ''cold''; the proposed amendment would provide the numerical temperature that should accompany each term. OMB regulations provide, at 5 CFR 1320.3(c)(2), that ''the

[105] The RFA addresses the impact of rules on ''small entities,'' defined as ''small businesses.'' ''small businesses,'' ''small governmental entities,'' and ''small [not-for-profit] organizations,'' 5 U.S.C. 601. The Rule does not apply to the latter two types of entities.

[106] SBA's revised small business size standards are published at 61 FR 3280 (Jan. 31, 1996).

public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of collection of information.]''

Thus, the Commission concludes that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part G—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Care Labeling Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

A. Requiring Instructions for Cleaning in Water

(1) Is there empirical evidence regarding whether consumers interpret a ''dry clean'' instruction to mean that a garment cannot be washed?

(2) How many domestic businesses provide professional wet cleaning, as defined in Part D.1. above, to the public on a regular basis?

(3) Should the Rule provide that, if an instruction for professional wet cleaning is provided, no other instruction need be given, or should a professional wet cleaning instruction only be allowed along with another cleaning instruction?

B. The Reasonable Basis Requirement of the Rule

(4) Would the amendment of Section 423.6(c)(3) of the Rule, which provides that a reasonable basis can consist of reliable evidence that each component of the garment can be cleaned according to the care instructions, to state, additionally, that a manufacturer or importer must possess a reasonable basis for the garment as a whole, clarify the reasonable basis requirements? Is any additional clarification needed?

C. Definitions of Water Temperatures

(5) How can consumers best be made aware of the approximate water temperatures in which they can safely and effectively wash their clothing? How can consumers best be made aware of how these temperatures correlate to the descriptors ''hot,'' ''warm,'' and ''cold''? Do consumers need to determine the actual or approximate water temperature in their washing machines when they select ''hot,'' ''warm,'' and ''cold'' on their washing machine dials, and, if so, how could they easily and practically do this? Could consumers use this information to select the optimal temperature offered by their washing machines for clothes labeled for ''hot,'' ''warm,'' or ''cold'' washing?

(6) Would consumers understand an instruction to use ''very hot'' water? Could consumers use this information either to select the optimal temperature offered by their washing machines for clothes labeled for ''very hot'' washing or to determine that such clothes should be washed by a professional cleaner?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade practices.

By direction of the Commission, Commissioner Azcuenaga not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98–12233 Filed 5–7–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–037–FOR, Amendment No. XXVI]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of proposed changes to North Dakota's revegetation policy document, ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.''

The changes pertain to (1) prime farmland woodland productivity standards, (2) woodland cover standards, (3) wetland standards, (4) woodland and shelterbelt standards for recreational lands, and (5) methods for sampling woodland cover. The amendment is intended to revise the North Dakota program to be consistent with SMCRA and the Federal regulations, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 8, 1998. If requested, a public hearing on the proposed amendment will be held on June 2, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 26, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, Telephone: 307/261–6550

James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol—600 E. Boulevard, Bismarck, North Dakota 58505–0480, Telephone: 701/328–2400.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550; Internet: GPadgettOSMRE.GOV

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be

found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated April 8, 1998, North Dakota submitted a proposed amendment (amendment number XXVI, administrative record No. ND–AA–05) (30 U.S.C. 1201 *et seq.*) North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(aa) and (bb), and on its own initiative. The amendment consists of changes to North Dakota's revegetation success standards policy document. The rule changes included in this amendment pertain to: (1) prime farmland productivity standards, (2) woodland cover standards, (3) wetlands standards, (4) recreational land use standards, and (5) methods for sampling woodland cover.

Specifically, North Dakota proposes to modify prime farmland provisions to require that yield measurements to be taken from reclaimed prime farmlands and productivity standards be met for at least 3 years before third stage (vegetation establishment) bond release can be granted. Changes are proposed to the woodland section to allow canopy and litter from woody plants to be included as part of total ground cover required for fourth-stage (final) bond release on reclaimed woodlands. Changes of the wetlands section of the revegetation document are proposed to allow more discretion in sampling prime wetlands and to reduce data requirements for reclaimed wetlands at the same time of final bond release. Changes to the other land uses section are proposed to require that applicable woodland shelterbelt standard be met for fourth stage bond release when woody planting are part of recreation land uses. Changes to the measurements section of the revegetation document are proposed to allow additional methods (the Daubermire frame and intercept line method) for sampling cover in woodlands.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., on May 26, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–12248 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6011–9]

National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts; Notice of Data Availability: Notice of Re-Opening of Comment Period and Public Meeting

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of re-opening of comment period and public meeting.

SUMMARY: This action provides notice of re-opening of the comment period for the National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability published in the **Federal Register** on March 31, 1998 (63 FR 15674). USEPA solicits comment on all aspects of this Notice and the supporting record. EPA also solicits additional data and information that may be relevant to the issues discussed in the Notice. The comment period is being re-opened for an additional 30 days due to the unanticipated interest regarding the public health implications of the information presented in the Notice of Data Availability.

The Agency will hold a public meeting on May 26, 1998, to discuss the contents of the Notice. Additional details regarding the meeting are provided below.

DATES: The original comment period ended April 30, 1998. The re-opened comment period will end on June 8, 1998. Comments should be postmarked or delivered by hand on or before June 8, 1998. Comments must be received or post-marked by midnight June 8, 1998.

ADDRESSES: Send written comments to DBP NODA Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW; East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to ow-docket@epamail.epa.gov.

As noted above, EPA is holding a public meeting on May 26, 1998, from 9:00 a.m. to 4:00 p.m. to discuss the contents of the Notice of Data Availability. The public meeting will be held at the office of Resolve at 1255 23rd Street, NW; Suite 275; Washington DC 20037. In keeping with its open door policy for meetings with the public EPA is inviting all interested members of the public to attend this meeting, with seating on a first-come, first-served basis. Interested persons who wish to submit comments should do so in writing during the 30-day public comment period in the manner described in the previous sections of this Notice.

FOR FURTHER INFORMATION CONTACT: For general information contact the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Dr. Vicki Dellarco, Office of Science and Technology (MC 4304), or Mike Cox, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460; telephone (202) 260–7336 (Dellarco) or (202) 260–1445 (Cox).

Dated: May 5, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 98–12300 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 258, 260, 261, 264, 265, 266, 270, and 279

[FRL–6011–1]

Notice of Intent To Reform Implementation of RCRA-Related Methods and Monitoring and Notice of Availability for Draft Update IVA of SW–846

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent and request for comment.

SUMMARY: The U.S. Environmental Protection Agency is providing notice of, and invites comment on, its intent to reform implementation of RCRA-related monitoring by formally adopting a performance-based measurement system (PBMS), by improving public outreach and communication, and by improving availability and distribution of the EPA-approved test methods manual ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846. Implementation of PBMS will include a proposal to change certain RCRA regulations so that the exclusive use of SW–846 methods will no longer be required. EPA is also announcing the availability of, and requests comment on, ''Draft Update IVA'' to the Third Edition of SW–846, which contains new and revised methods. EPA also requests comment on deleting several individual methods and integrating them into two comprehensive methods, and removing Chapter Eleven from SW–846.

DATES: The Agency is opening the comment period for the limited purpose of obtaining information and views on the Agency's notice to reform implementation of RCRA-related monitoring, as described in this document, and on the methods and chapters of Draft Update IVA. Written comments must be submitted by June 22, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–4TMA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, DC 20460. Courier deliveries of comments should be submitted to the RIC at the address listed below. Comments may also be submitted electronically through the Internet to: RCRA-docket@epamail.epa.gov.

Comments in electronic format should also be identified by the docket number F–98–4TMA–FFFFF. Submit electronic comments as an ASCII file and avoid the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in Wordperfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, S.W., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and notice are available electronically. See the ''Supplementary Information'' section for information on accessing it.

Copies of Draft Update IVA and of the Third Edition of SW–846, as amended by Updates I, II, IIA, IIB, and III, are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number for Draft Update IVA is 055–000–00593–1. Copies of the Third Edition integrated manual and its updates (including Draft Update IVA) are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (800) 553–NTIS (553–6847). The NTIS order number for Draft Update IVA is PB–98–111750.

In addition, a CD–ROM version of SW–846, Third Edition, as amended by Updates I through III, is available from NTIS. A CD–ROM of Draft Update IV is expected to be published in 1998.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For information on specific aspects of this document or the Update IVA methods, contact the Methods Information Communication Exchange (MICE) Service at 703–821–4690, e-mail address: mice@lan828.ehsg.saic.com; or contact Kim Kirkland, Office of Solid Waste (5307W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, 703–308–8855, e-mail address: kirkland.kim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The docket index and the notice are available on the Internet.

Follow these instructions to access the information electronically:

From the World Wide Web (WWW), type WWW: http://www.epa.gov/epaoswer/hazwaste/test/index.htm

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I. Background

The EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for monitoring conducted in support of subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. Use of some of these methods is required by some of the hazardous waste regulations under subtitle C of RCRA. In other situations, SW–846 functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, to satisfy RCRA-related sampling and analysis requirements. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

SW–846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW–846 as updates to support changes in the regulatory program and to improve method performance and cost effectiveness. To date, EPA has finalized Updates I, II, IIA, IIB, and III to the SW–846 manual, and the updated and fully integrated manual contains approximately 3500 pages.

II. Notice of Agency Intent to Reform Implementation of RCRA-Related Monitoring

EPA is actively working to implement the President's program for reinventing government and reforming regulatory policy. In order to meet goals related to this important effort, EPA is considering reform of the implementation of monitoring under the RCRA Program. The goals include the timely and efficient promotion and approval of monitoring technologies, increased flexibility regarding regulatory compliance (i.e., flexibility in analytical method selection), and improvements in public communication (e.g., to educate the public regarding new efforts and to dispel any misconceptions regarding the use of SW–846).

The following subsections provide notice of and describe actions to be undertaken by EPA in an effort to meet the aforementioned goals.

A. Adoption of PBMS in the RCRA Program

On October 6, 1997, EPA published a Notice of Intent, notifying the public of the Agency's plans to implement performance-based measurement systems (PBMS) for environmental monitoring in all of its media programs to the extent feasible (see 62 FR 52098). Some members of the regulated community and Congress have suggested that EPA needs to change the way it specifies monitoring requirements in regulations and permits, in a manner which allows more flexibility and promotes the use of new technologies. EPA supports this position and is committed to incorporating the PBMS approach in media monitoring, to the extent feasible, including monitoring conducted in support of RCRA.

Basically, PBMS conveys ''what'' needs to be accomplished, but not prescriptively ''how'' to do it. EPA defines PBMS as a set of processes wherein the data quality needs, mandates or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner. Under a performance-based approach, the regulating entity will specify questions to be answered by the monitoring process, the decisions to

be supported by the data, the level of uncertainty acceptable for making the decisions, and the documentation to be generated to support the PBMS approach in the RCRA Program. The criteria may be published in regulations, technical guidance documents, permits, work plans, or enforcement orders. Data producers will demonstrate that a proposed sampling and analytical approach meets the monitoring criteria specified in the Quality Assurance Project Plans or Sampling and Analysis Plans for the individual projects or applications.

EPA believes that the PBMS approach will provide many benefits to both regulators and the regulated community when conducting monitoring for compliance with the RCRA regulations or for general information gathering. The benefits include flexibility in method selection, expedited approval of new and emerging technologies to meet monitoring requirements, and the development and use of cost-effective methods. Where PBMS is implemented, the regulated community will be able to select an appropriate analytical method for use in complying with EPA's RCRA regulations, including any method not found in EPA-published method manuals that is both cost-effective and meets the data quality objectives of the particular project for which it is being used.

It is EPA's intent that implementation of PBMS have the overall effect of both improving data quality and encouraging the advancement of analytical technologies. Therefore, EPA has been working at breaking down barriers to using new and innovative monitoring techniques, including requirements to use specific measurement methods or technologies when complying with some of the RCRA regulations. As part of EPA's efforts to implement PBMS, and thus reform monitoring under the RCRA Program, the following actions are planned:

—Incorporating the PBMS philosophy into new regulations.

—Establishing data quality and performance requirements for RCRA-required monitoring and including the requirements in the RCRA regulations, as necessary, to assist the regulated community in method selection and help assure successful PBMS implementation.

—Developing new sampling and testing methodologies which are compatible with the PBMS approach and encouraging use of those methods.

—Working with other regulating entities to help assure that the regulated community benefits from the flexibility of the PBMS approach at all regulating levels of the RCRA Program, when practical and feasible.

—Fostering training and guidance to educate regulators and the regulated community regarding the flexibility of PBMS, the inherent flexibility of SW–846, and application of PBMS during RCRA-related monitoring.

—Removing some of the required uses for SW–846 methods from the RCRA regulations, where the Agency believes these requirements are not necessary (in order to facilitate PBMS implementation), and thus removing regulatory barriers to the use of new and innovative technologies for RCRA-related monitoring.

The Agency is interested in comments regarding PBMS implementation within the RCRA Program. In particular, EPA is interested in receiving public comment in response to the following questions:

1. Will EPA's implementation of PBMS provide adequate flexibility in method selection and facilitate the use of new technologies?

2. What Agency actions during the process of changing to PBMS within the RCRA Program would particularly assure a smooth transition (including actions related to public notice and the training of affected parties)?

3. What are the perceived technical and programmatic barriers to effective PBMS implementation in the RCRA Program and what Agency actions might be effective in removing these barriers?

4. What might be the economic impact (additional costs and cost savings) on the regulated community and other entities (e.g., small businesses) as a result of PBMS implementation in the RCRA Program?

5. What concerns exist regarding establishment of the data quality and performance requirements for RCRA-required monitoring that are necessary to adequately assist the regulated community in method selection and assure successful PBMS implementation?

6. How might the Agency best work with other regulating entities (e.g., states) to maximize the regulated community's benefits from the flexibility provided by the PBMS approach?

7. What concerns exist regarding the impact of PBMS implementation on state programs?

8. What concerns exist regarding the potential effect of PBMS on compliance monitoring and enforcement of RCRA-related regulatory and statutory requirements? What might be the positive or negative impacts of PBMS on compliance monitoring and enforcement, including regarding facility inspections?

9. What might be the environmental benefits that may be achieved through implementation of PBMS within the RCRA program?

B. Removing the Required Uses of SW–846 Methods From the RCRA Regulations

As noted in the previous section, EPA intends to implement PBMS to the extent feasible for RCRA-related monitoring. One barrier to successful PBMS implementation is the current requirement to use specific measurement methods or technologies in complying with regulations. Some RCRA regulations require the use of specific SW–846 methods or SW–846 in general. As explained below, EPA believes that some of these regulatory restrictions on methods may no longer be necessary and run counter to EPA's intent to adopt PBMS for RCRA-related monitoring.

Several of the regulations require the use of specific SW–846 methods for defining the particular regulatory parameters. Such requirements are referred to as ''method-defined parameters.'' For example, 40 CFR 261.24(a) requires the use of SW–846 Method 1311, the Toxicity Characteristic Leaching Procedure, to determine if a waste exhibits the toxicity characteristic. In those cases, the method itself is the regulation and a method change or substitution cannot be accomplished without undermining the substantive requirement demonstrated by the method. These required uses of SW–846 methods are necessary.

Several other RCRA regulations require the use of SW–846 methods where those methods do not define the particular regulatory parameter. Most required uses of SW–846 methods fall under this category. An example is 40 CFR 260.22(d)(1)(I), which currently requires the use of only SW–846 methods in support of a petition to amend part 261 to exclude (''delist'') a waste listed with code ''T'' in subpart D of 40 CFR part 261. EPA believes that these types of required uses of SW–846 methods may not be necessary.

As a result of the requirements to use SW–846 methods, all final SW–846 updates must be issued by rulemaking. This often delays the availability of needed new or revised methods. In addition, requiring the use of SW–846 methods discourages or impedes the use of new and innovative methods which are both cost-effective and capable of meeting data quality objectives.

Therefore, EPA is considering publishing in the near future a proposal in the **Federal Register** to remove

required uses of SW–846 methods from the RCRA subtitle C regulations for all purposes other than the determination of method-defined parameters. The Agency would take this action as part of its efforts to implement PBMS for RCRA-related monitoring. This action would also remove the need to engage in rulemaking for every SW–846 update and would allow the updates to be issued as revisions to a guidance document, which was what SW–846 was originally intended to be. This action should promote the timely incorporation of new and innovative technologies into the RCRA Program.

The Agency is interested in receiving comments at this time regarding its plan to remove certain required uses of SW–846 methods from the RCRA regulations, as described above. In particular, EPA is interested in public comment in response to the following questions:

1. Are any of the required uses of SW–846 methods in the RCRA regulations for other than method-defined parameters necessary?

2. What might be the economic impact on the regulated community and other entities (e.g., small businesses) as a direct result of the removal of certain required uses of SW–846 methods?

3. What concerns exist regarding implementation and enforcement of the allowed use of ''other appropriate methods'' in lieu of a specific SW–846 method for RCRA-related monitoring?

4. What concerns exist regarding the impact on state RCRA programs of the removal of certain required uses of SW–846 methods from the Federal RCRA regulations?

C. Changing the Approach for Releasing SW–846 Updates and Changing the Method Evaluation Process

Assuming that the rule to remove the required use of most SW–846 methods is finalized, as described in the previous section, EPA is considering the use of rulemaking only for those updates to SW–846 which include methods used for method-defined parameters. Rulemakings for those method updates will remain necessary because the required uses of those methods will remain in the RCRA regulations. All other SW–846 updates will be finalized more efficiently as guidance, such as by releasing a draft SW–846 update in conjunction with publication of a **Federal Register** document with an invitation for public comment before finalizing the update. The Agency may also use other means of update release and public notification to assure that reliable, innovative methods are provided to the regulated community in a timely and cost-effective manner.

At a minimum, future procedures for releasing new SW–846 methods will include a critical method evaluation process, in order to continue to assure the publication of reliable methods for the RCRA Program. Peer input and review, internal and external, are already in place within the RCRA monitoring program to ensure that its products (e.g., new SW–846 methods) are based upon the best current knowledge from science and judged credible by those who deal with the products. Currently, the Agency receives peer input regarding any method considered for inclusion in SW–846 from an internal technical work group composed of national expert-level chemists and sometimes external experts, as required based on the necessary expertise. To augment this process, the Agency is considering an approach whereby additional relevant experts from outside the program are invited to evaluate new methods, through peer review or another advisory process. Such reviewers or advisors might include both internal (from within EPA) or external (outside EPA) peers of the program staff. The new process is expected to include a critical evaluation of a final new method, before its release, whereby formal comments are submitted and a review record created and maintained.

The Agency is interested in comments regarding possible alternative approaches to SW–846 update releases, if, as mentioned above, the rule to remove certain required uses of SW–846 methods is finalized. Specifically:

1. Should EPA continue to solicit public comments on SW–846 methods? Should the Agency use more timely means of releasing updates other than **Federal Register** documents and under what circumstances would such procedures be preferred or necessary?

2. What future mechanism should be used to assure adequate and quality review of methods? How could EPA best make use of peer review or another advisory process in the development of guidance and methods for RCRA-related monitoring?

D. Improving SW–846 Availability to the Public

In order to further promote the availability of RCRA-related monitoring technologies, EPA is considering an SW–846 distribution approach which offers more choices to the public for obtaining SW–846 methods. For most of the history of SW–846, the public received paper copies of SW–846 through a subscription service with the Government Printing Office (GPO), or the public purchased paper copies of any portion of the manual at any time through the National Technical Information Service (NTIS).

In response to requests for electronic versions of the SW–846 methods, EPA published in 1996 a CD–ROM version of the manual for sale from NTIS. EPA and NTIS recently completed Version 2 of the SW–846 CD–ROM, which includes the manual as revised through Update III. The SW–846 CD uses Adobe Acrobat Reader with Search, supplied with the CD, to view the SW–846 methods and chapters. As explained below, EPA is also planning to offer all of the SW–846 methods and chapters on the Internet, without the Adobe Acrobat search feature.

The Internet is another means used today by EPA to distribute documents electronically to the general public. EPA has established a policy of placing official rulemakings and related background documents in support of the rulemakings on the Internet. The public has expressed an interest in receiving SW–846 documents for free on the Internet, and in response EPA has decided to make SW–846 available on the Internet in the near future. SW–846 is very large, both in number of documents and electronic file size (several methods contain many imported diagrams and flow charts). EPA is interested in determining whether the downloading of the entire manual from the Internet will be too timely or otherwise impractical or difficult for most Internet users. If the Agency determines that having the current SW–846 on the Internet provides a valuable service to the public, then EPA will make subsequent SW–846 updates, and other relevant testing protocols and documents, available on the Internet.

EPA is requesting comment on the effectiveness of the above means to distribute SW–846. The Agency is also interested in other ideas for making SW–846 methods more available. The Agency understands that making SW–846 available on the Internet without cost may alleviate the need to purchase paper versions of the manual.

E. Improving Public Outreach and Communication Regarding SW–846 and RCRA-Related Monitoring

The Agency currently uses many different means (e.g., **Federal Register** documents, training, and symposia) to inform the public of important activities within its programs. EPA is considering an approach which both maintains and supplements these means of public communication in a manner that

improves public outreach and communication regarding SW–846 and RCRA-related monitoring. EPA believes that improving public outreach will promote public preparedness and understanding regarding the reforms discussed in sections II.A through II.C. The Agency also believes that improved outreach efforts will help dispel any misconceptions regarding SW–846 and RCRA-related monitoring. The paragraphs to follow describe some of the communication and outreach efforts which the Agency is considering maintaining or expanding. EPA is interested in public comment regarding these efforts and suggestions for other means to improve public outreach and education.

The Agency remains open to the needs and interests of environmental laboratories and the regulated community and is interested in receiving comment on those needs and interests. Specifically, EPA wants to facilitate communication and work directly with the laboratories and the regulated community regarding the application of SW–846 methods. The Agency hopes that this increase in communication will both assure the correct interpretation of SW–846 methods and facilitate the resolution of any problems with method application. For example, EPA is currently working with the International Association of Environmental Testing Laboratories (IAETL) Section of the American Council of Independent Laboratories (ACIL) regarding the application of certain SW–846, Update III methods.

EPA also intends to continue to work with outside organizations or individuals in developing new methods for inclusion in SW–846. EPA developed and currently maintains a variety of partnerships with many sectors of the environmental analytical community (such as other Federal Agencies, private industry, State agencies, Consensus Standard Organizations, and academic institutions) to develop various analytical techniques for SW–846 such as microwave digestion, immunoassay, and field portable XRF methods, to name a few. For example, EPA is currently working with the private sector in the development of additional SW–846 screening methods for organic analytes.

As part of its efforts to increase the role of the scientific community in the implementation of monitoring under the RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Programs, EPA joined in a partnership with the American Chemical Society to annually sponsor the Waste Testing and Quality Assurance (WTQA) Symposium. The symposium was initiated in 1985 as part of EPA's efforts to foster a partnership among EPA, the regulated community, the public, State regulatory agencies, and other members of the RCRA and CERCLA monitoring community. Attendees have an opportunity at the symposium to share new monitoring approaches and technologies and to contribute to discussions regarding regulatory issues and initiatives. The WTQA currently has three goals: (1) to serve as a forum for all interested parties to work together to solve RCRA and CERCLA environmental monitoring and waste characterization problems in a cost-effective manner, (2) to give State regulatory agencies and the public timely information about EPA activities that might affect their programs, and (3) to permit the members of the monitoring community an opportunity to exchange information and experiences in using both existing and new monitoring methods and approaches. Thus, the WTQA Symposium has always served as an effective means to educate the public and regulators regarding the inherent flexibility of SW–846 methods and to foster new technology development. It has also always served as an effective forum for feedback regarding successes and failures during monitoring and to disseminate knowledge regarding new and modified approaches and their performance in the real-world.

The Agency will continue to annually sponsor the WTQA Symposium. The WTQA Symposium will be held this year (1998) on July 13 through 15 at the Marriott Crystal Gateway in Arlington, Virginia. This year's symposium will focus on PBMS implementation and its potential impact on the regulated community and testing laboratories. EPA plans to hold issue workshops on PBMS and perhaps regarding other reforms to RCRA-related monitoring. Attendees will also learn about the newest laboratory methods associated with environmental monitoring and quality assurance/quality control (QA/QC), and about how changes regarding monitoring conducted in support of EPA's programs will affect their operations.

The Methods Information Communication Exchange (MICE) Service, or ''Hotline,'' is another existing means that the Agency uses to communicate with the public regarding RCRA-related monitoring. The MICE Service provides timely answers to method-related questions and takes comments via the telephone, fax, or e-mail. Chemists, ground-water specialists, and sampling experts who are knowledgeable in SW–846 procedures are directly available through the MICE Service to the public and regulators involved in RCRA-related monitoring. People interested in using the MICE Service call a voice mail answering service that is available 24 hours per day, 7 days a week. The caller can listen to several recorded messages on common SW–846 topics and subsequently leave a message containing a question regarding an SW–846 method or related topic. The messages are retrieved each working day and, after a review of the questions and any necessary research, the MICE Service provides a response.

The MICE Service also acts as an effective means to educate members of the public directly regarding inherent method flexibility and to clarify whether a method is required by a RCRA regulation. The service therefore can be used in the future to help assure the proper application of SW–846 methods from a PBMS standpoint. The MICE Service also documents existing misconceptions or issues regarding SW–846 methods, and thus serves as a first step in identification and resolution of some issues. Because of its unique and immediate means of public outreach and education, EPA will continue to sponsor the MICE Service. Instructions regarding contacting the MICE Service can be found under the section of this document entitled **FOR FURTHER INFORMATION CONTACT**.

The Agency also authors articles for publication in professional periodicals as a means to educate the public and regulators regarding news-worthy topics. The staff of EPA's Office of Solid Waste (OSW) frequently contribute articles to environmental magazines and journals regarding SW–846 and other topics related to monitoring in support of RCRA regulations. The articles educate and inform the public regarding new analytical or sampling methodologies, SW–846 and the regulatory process, the inherent flexibility of SW–846 methods, and the status of various updates to SW–846.

EPA will continue to use magazine and journal articles as a means to help dispel misconceptions by regulators and the regulated community regarding SW–846 flexibility and to clarify EPA's policy on method flexibility and PBMS. OSW has submitted articles which educate the public regarding the implementation of PBMS. Specifically, an article in ''Environmental Lab'' by two staff members of the Methods Team of OSW included two PBMS-related sections entitled ''Method Flexibility

and the Performance-Based Measurement System (PBMS)'' and ''Method Flexibility and PBMS Initiatives.'' Other publications to which OSW submits articles include the bi-monthly ''Environmental Testing and Analysis,'' which includes a new EPA-OSW Methods Update feature, and the bi-weekly ''Environmental Laboratory Washington Report.''

As another means to provide timely communications to interested parties, EPA presently lectures and conducts presentations in both this country and abroad regarding innovative analytical technologies, new analytical strategies and issues regarding RCRA-related monitoring. EPA also provides training courses regarding monitoring under the RCRA Program. The training course entitled ''Analytical Strategy for the RCRA Program: A Performance-Based Approach'' is currently taught by OSW staff to Regional, State and symposium (e.g., WTQA) audiences with the intent to clarify the monitoring flexibility allowed by SW–846 methods and the RCRA regulations and to promote and explain PBMS. Basically, the training course explains: (1) the regulatory aspects of RCRA analyses; (2) the role of SW–846, its organization and method format, and its correct application for RCRA-related monitoring; and (3) the factors to be considered in the selection of appropriate analytical methods, especially within the context of a PBMS approach.

EPA is considering increasing the availability of Agency-sponsored training, lectures, and presentations to the public, Regions, and States regarding SW–846 and other topics, such as PBMS, related to monitoring conducted in support of RCRA regulations. EPA is also planning to provide training regarding the implementation of PBMS to the Regions and other affected entities. In the future, EPA hopes to provide RCRA-related training to the regulated community both in person and via video or satellite broadcast.

Finally, EPA intends to use press releases and/or memoranda to announce time-sensitive milestones related to SW–846 and monitoring under the RCRA Program. For example, EPA is issuing a press release to announce the availability of Draft Update IVA of SW–846, referring the readers to this document. In addition, assuming the rule to remove certain required uses of SW–846 methods from the RCRA regulations is finalized (see section II.B above), the Agency is considering the use of workshops, peer review panels, and/or public meetings as mechanisms for disseminating information regarding new and revised SW–846 methods and chapters.

The Agency is interested in comments from the public on all of the above means (e.g, the WTQA Symposium, MICE Service, the use of journal articles, and training courses) for improving public outreach and communication regarding RCRA-related methods and monitoring. For example, the Agency is interested in whether the public believes the WTQA Symposium would benefit from merging with other EPA programs, and is also interested in suggestions for improving the WTQA Symposium. EPA would like comments regarding increasing the effectiveness and availability of RCRA-related information and training for the public, such as through video or satellite broadcast as mentioned above.

III. Availability of Draft Update IVA and Invitation for Public Comment

This document also announces the availability of Draft Update IVA to SW–846 and invites public comment on its content. EPA is publishing this document for informational purposes only, and is not at this time formally proposing to revise SW–846 by adding Update IVA or to incorporate the update in the RCRA regulations for required uses. Therefore, this document will not be used as a basis for a final rule to update SW–846 or revise any regulation. EPA is attempting to make these Agency-reviewed methods available to the public early, for guidance purposes (i.e., the methods can be used in all applications for which the use of SW–846 methods is not mandatory and for which they are effective). In addition, as noted in section II above and explained further at the end of this section, if the rule to remove certain requirements to use SW–846 methods is finalized, the Agency will not have to finalize certain SW–846 updates (including Draft Update IVA) through the rulemaking process.

The Draft Update IVA methods have passed EPA's Technical Workgroup review, but have not been promulgated for inclusion in SW–846 and the RCRA regulations. As noted in section II of this document, several regulations under subtitle C of RCRA currently require that certain SW–846 methods be employed. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. The methods listed in Draft Update IVA fall in the category of ''any reliable method.'' They may currently be used in all applications for which the use of SW–846 methods is not mandatory. The methods of Draft Update IVA, however, cannot be used for compliance with required uses of SW-846 methods. The Agency also cautions the regulated community to obtain permission from the appropriate regulating entity, if required under State or local regulations, before using these methods for non-mandatory applications.

Table 1 provides a listing of the fifteen revised SW–846 methods and five revised chapters or other SW–846 documents found in Draft Update IVA. Table 1 also identifies those parts of each method or chapters on which the Agency is interested in receiving public comment. EPA is interested in comments from the public on the identified parts because some or all of their text represents significant revisions from the promulgated version of the document currently in SW–846, as amended by Updates I through III.

(**Note:** Unless otherwise indicated as former sections, the section numbers in Table 1 refer to the section numbers in the Draft Update IVA version of the method.)

Significant revisions include text deletions, additions, or other revisions that change a method's procedure or the intent or meaning of the text. Significant revisions do not include typographical or grammatical corrections, table reformatting (where the information is not changed), logical outgrowths of other revisions (e.g., the renumbering of sections to account for the addition of a new section), or other edits that are not substantive changes to text intent or the analytical procedure (e.g., the replacement of ''Teflon''' with ''PTFE''). Nonsignificant revisions also include the movement of otherwise unchanged information to another appropriate location in the method. For example, the order of some of the equipment listed in section 4.0 of Method 8321B is different from that found in section 4.0 of Method 8321A; however, much of the equipment itself has not changed. Therefore, Table 1 lists only those parts of section 4.0 of Method 8321B which have been significantly revised (e.g., new equipment specifications). The Agency will, however, consider comments on the reordering of otherwise unchanged information in the revised methods of Update IVA.

Table 2 provides a listing of the thirteen new SW–846 methods found in Draft Update IVA. Since these are new methods, EPA is interested in comments on the content of all sections or parts of the new methods.

Finally, Table 3 identifies the forty-four methods to be integrated or deleted from SW–846 as part of Draft Update IVA. All but one of these methods are individual flame or graphite furnace

atomic absorption methods. The exception is Method 3810, ''Headspace'', an obsolete headspace screening method which has been replaced by Method 5021, ''Volatile Organic Compounds in Soils and Other Solid Matrices Using Equilibrium Headspace Analysis.'' The Agency expects to delete Method 3810 because it is no longer needed in SW–846 because Method 5021 was recently added to SW–846 as part of Final Update III. Method 5021 can be used for both quantitative analysis and screening applications.

The individual atomic absorption methods are being deleted as part of Draft Update IVA because their inclusion is redundant given that their procedures and target analytes have been fully integrated into revised Method 7000B (see Table 1) or new Method 7010 (see Table 2), the general methods for the techniques. The Agency is interested in comments on these method integrations and deletions. As mentioned earlier in section II of this notice, several regulations under subtitle C of RCRA currently require that certain SW–846 methods be employed. Therefore, the methods contained in Draft Update IVA, cannot be used for compliance with required uses of SW–846 methods and remain in effect until the rule to remove the required use of SW–846 methods has been promulgated.

TABLE 1.—REVISED METHODS AND CHAPTERS

Method No.	Method or chapter title	Sections or parts open for comment
	Table of Contents	All parts.
	Chapter Two	All parts.
	Chapter Three	All parts.
	Chapter Four	All parts.
	Chapter Five	All parts.
3015A	Microwave Assisted Acid Digestion of Aqueous Samples and Extracts.	All parts.
3051A	Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils.	All parts.
3535A	Solid-Phase Extraction (SPE)	All parts.
3545A	Pressurized Fluid Extraction (PE)	1.1–1.4; 2.1; 2.2; 3.3; 5.3.4; 5.4.2; 5.4.3; 5.5.4; 5.5.6; 7.1.1; 7.1.3; 7.1.5; 7.1.6; 7.3; 7.5; 7.8.2; 7.9; 8.4; 9.4; 10.
6020A	Inductively Coupled Plasma—Mass Spectrometry	All parts.
7000B	Flame Atomic Absorption Spectrophotometry	All parts.
7471B	Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique).	7.1.
8081B	Organochlorine Pesticides by Gas Chromatography	1.10; 2.2; 7.1; 7.3.1.2; 7.7.2; 7.7.3; 7.9.2; 7.10.2; 9.1; 9.5–9.8; 10; Tables 12, 15, and 16; removal of former sec. 7.7.6.
8082A	Polychlorinated Biphenyls (PCBs) by Gas Chromatography	2.2; 2.3; 6.2; 7.1.1; 7.1.2; 7.4.1; 7.4.2; 7.4.3.1–7.4.3.3; 7.4.8; 7.4.9; 7.6.10; 7.9.2; 7.10.2; 8.3.1; 8.3.2; 9.5; 9.5.1–9.5.3; 9.6; 10; Tables 11–16; removal of former secs. 7.10.4, 7.10.5, 8.3.1.1 and 8.3.1.2.
8141B	Organophosphorus Compounds by Gas Chromatography	1.1; 1.4; 2.1–2.3; 3.5; 5.1; 7.1; 7.1.1; 7.1.2; 7.2.2; 7.2.3; 7.5.1; 7.8; 7.8.3; 7.8.4; 7.8.1-7.8.3; 8.1–8.3; 8.3.1-8.3.3; 8.4; 8.4.1–8.4.6; 8.5; 8.6; 9.3; 9.4; 10; Table 4; Tables 11–14; removal of former secs. 8.3.3.1, 8.3.3.1.1-8.3.3.1.5, 8.3.3.2, and 8.7, and 8.7.1-8.7.5.
8270D	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).	1.1; 1.2; 1.4.7; 7.3.6; 7.5.4; 7.5.4.1; 7.5.4.2; 9.8; 9.9; 10; Tables 16, 17, and 18.
8280B	Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans by High Resolution Gas Chroma-tography/Low Resolution Mass Spectrometry (HRGC/LRMS).	2.3.1; 2.3.2; 7.0; 7.3.6; 7.4.6; 7.5.4.4; 10; Table 1 (footnote).
8290A	Polychlorinated Dibenzo-dioxins (PCDDs) and Poly-chlorinated Dibenzofurans (PCDFs) by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry (HRGC/HRMS).	1.1; 2.3; 4.2; 4.2.1; 4.2.2; 4.3.21; 5.2.7; 5.4; 5.5; 5.6; 5.8; 6.4; 6.6; 6.7.1; 7.1; 7.1.1; 7.4.1.4; 7.4.2.2; 7.4.3.6; 7.4.5.3; 7.4.6.1; 7.4.6.5; 7.5.1; 7.5.1.4; 7.5.3.1–7.5.3.6; 7.7.1.4.3; 7.7.1.4.4; 7.7.4.4; 7.8.3; 7.8.4.3.1; 7.9.3; 7.9.5.2; 7.9.6; 8.3.1; 8.3.3; 9.1–9.6; 10; Table 7; Tables 12–17; Figures 1–6; removal of former secs. 5.6.1, 5.6.2, and 8.3.4.2.1.
8321B	Solvent-Extractable Nonvolatile Compounds by High Performance Liquid Chromatography/Thermo-spray/Mass Spectrometry (HPLC/TS/MS) or Ultraviolet (UV) Detection.	1.1; 1.2; 1.4; 1.5; 2.1.3; 2.1.4; 2.2.1; 2.2.3; 3.3; 3.4.2–3.4.5; 4.1.2; 4.1.3.2; 4.3; 4.3.1; 4.6.1–4.6.4; 4.7; 4.8; 4.10; 4.19; 5.8; 5.9; 5.11; 5.12; 5.16; 7.1; 7.1.3; 7.2.1.6; 7.3; 7.5.2.1; 7.5.2.2; 7.5.3.2; 7.6.1; 7.6.3; 7.7; 7.8.2.1; 7.8.2.2; 7.8.2.5; 7.8.3; 7.9; 7.9.1; 7.9.4; 7.10.2; 7.10.3; 7.11.1; 9.4; 10; Table 18; removal of former secs. 7.5.2.8, 8.2.4, 9.2, 9.2.1, and 9.2.2; removal of former Tables 3, 10, 13, 14, 17, 18, and 19.
8330A	Nitroaromatics and Nitramines by High Performance Liquid Chromatography (HPLC).	1.2; 2.3; 4.2.4; 7.1; 7.1.3; 7.3.2; 7.3.3; 7.4.2; 8.1; 8.2; 8.3; 8.4; 8.4.1–8.4.4; 8.5; 8.6; 9.7–9.9; 10; Table 2 (footnote), Tables 9–11; removal of former secs. 4.4 and 4.4.1.

TABLE 2.—NEW METHODS

Method No.	Method title
3562	Supercritical Fluid Extraction of Polychlorinated Biphenyls (PCBs) and Organochlorine Pesticides.
4500	Mercury in Soil by Immunoassay.
4670	Triazine Herbicides as Atrazine in Water by Quantitative Immunoassay.
6200	Field Portable X-Ray Fluorescence Spectrometry for the Determination of Elemental Concentrations in Soil and Sediment.
6500	Dissolved Inorganic Anions in Aqueous Matrices by Capillary Ion Electrophoresis.
6800	Elemental and Speciated Isotope Dilution Mass Spectrometry.
7010	Graphite Furnace Atomic Absorption Spectrophotometry.
7473	Mercury in Solids and Solutions by Thermal Decomposition, Amalgamation, and Atomic Absorption Spectrophotometry.
7474	Mercury in Sediment and Tissue Samples by Atomic Fluorescence Spectrometry.
9000	Determination of Water in Waste Materials by Karl Fischer Titration.
9001	Determination of Water in Waste Materials by Quantitative Calcium Hydride Reaction.
9074	Turbidimetric Screening Method for Total Recoverable Petroleum Hydrocarbons in Soil.
9216	Potentiometric Determination of Nitrite in Aqueous Samples with Ion-selective Electrode.

TABLE 3.—DELETED METHODS

Method No.	Method title
3810[a]	Headspace.
7020[b]	Aluminum (Atomic Absorption, Direct Aspiration).
7040[b]	Antimony (Atomic Absorption, Direct Aspiration).
7041© ...	Antimony (Atomic Absorption, Furnace Technique).
7060A©	Arsenic (Atomic Absorption, Furnace Technique).
7080A[b]	Barium (Atomic Absorption, Direct Aspiration).
7081© ...	Barium (Atomic Absorption, Furnace Technique).
7090[b]	Beryllium (Atomic Absorption, Direct Aspiration).
7091© ...	Beryllium (Atomic Absorption, Furnace Technique).
7130[b]	Cadmium (Atomic Absorption, Direct Aspiration).
7131A©	Cadmium (Atomic Absorption, Furnace Technique).
7140[b]	Calcium (Atomic Absorption, Direct Aspiration).
7190[b]	Chromium (Atomic Absorption, Direct Aspiration).

TABLE 3.—DELETED METHODS—Continued

Method No.	Method title
7191© ...	Chromium (Atomic Absorption, Furnace Technique).
7200[b]	Cobalt (Atomic Absorption, Direct Aspiration).
7201© ...	Cobalt (Atomic Absorption, Furnace Technique).
7210[b]	Copper (Atomic Absorption, Direct Aspiration).
7211© ...	Copper (Atomic Absorption, Furnace Technique).
7380[b]	Iron (Atomic Absorption, Direct Aspiration).
7381© ...	Iron (Atomic Absorption, Furnace Technique).
7420[b]	Lead (Atomic Absorption, Direct Aspiration).
7421© ...	Lead (Atomic Absorption, Furnace Technique).
7430[b]	Lithium (Atomic Absorption, Direct Aspiration).
7450[b]	Magnesium (Atomic Absorption, Direct Aspiration).
7460[b]	Manganese (Atomic Absorption, Direct Aspiration).
7461© ...	Manganese (Atomic Absorption, Furnace Technique).
7480[b]	Molybdenum (Atomic Absorption, Direct Aspiration).
7481© ...	Molybdenum (Atomic Absorption, Furnace Technique).
7520[b]	Nickel (Atomic Absorption, Direct Aspiration).
7521© ...	Nickel (Atomic Absorption, Furnace Method).
7550[b]	Osmium (Atomic Absorption, Direct Aspiration).
7610[b]	Potassium (Atomic Absorption, Direct Aspiration).
7740© ...	Selenium (Atomic Absorption, Furnace Technique).
7760A[b]	Silver (Atomic Absorption, Direct Aspiration).
7761© ...	Silver (Atomic Absorption, Furnace Technique).
7770[b]	Sodium (Atomic Absorption, Direct Aspiration).
7780[b]	Strontium (Atomic Absorption, Direct Aspiration).
7840[b]	Thallium (Atomic Absorption, Direct Aspiration).
7841© ...	Thallium (Atomic Absorption, Furnace Technique).
7870[b]	Tin (Atomic Absorption, Direct Aspiration).
7910[b]	Vanadium (Atomic Absorption, Direct Aspiration).
7911© ...	Vanadium (Atomic Absorption, Furnace Technique).
7950[b]	Zinc (Atomic Absorption, Direct Aspiration).
7951© ...	Zinc (Atomic Absorption, Furnace Technique).

[a]—Replaced by Method 5021
[b]—Integrated into Method 7000B
©-Integrated into Method 7010

IV. Basis for Making Draft Update IVA Available and Agency Plans for Finalizing the Update

For previous updates to SW–846, EPA published a notice of proposed rulemaking in the **Federal Register**, requested public comment, and subsequently published a notice of final rulemaking. This process was necessary because, as noted above, the use of some of these methods is required by some of the hazardous waste regulations under subtitle C of RCRA. However, for Draft Update IVA, EPA is initially publishing a document of its availability and inviting public comment on the Agency-reviewed methods and chapters.

EPA believes that Draft Update IVA will be valuable to the public as guidance, and thus has taken today's action to expedite its availability, instead of delaying distribution of this update to coincide with publication of a notice of proposed rulemaking. EPA believes this approach will allow introduction of Draft Update IVA methods to the public in a more timely manner than the proposal process, without compromising the method review and approval process. EPA also believes this approach will allow greater flexibility in the use of guidance methods, for Regional, State, and local agencies as well as industry; and will allow the regulated community an opportunity to participate early in the method review process with the submittal of comments on the draft methods. The Agency will consider all comments received on Draft Update IVA.

As noted in section II of this document, the methods in SW-846 are currently required by some of the RCRA regulations. As also explained in section II, EPA is planning to formally propose in the **Federal Register** the removal from the RCRA regulations certain requirements to use SW–846 methods. The Agency notes that none of the methods in Draft Update IVA are required for use in defining the hazardous waste characteristics. EPA expects that the methods and chapters of Draft Update IVA will remain in their current Agency-reviewed form until the SW–846 deregulatory rule is finalized. EPA hopes to then revise Draft Update IVA, as appropriate, in response to public comment and plans to publish a document of availability in the **Federal Register** for the final update. The publication of a proposed and final rule in the **Federal Register** for Update IVA will not be necessary once the deregulatory rule has been finalized. Should the SW–846 deregulatory rule be proposed but not finalized in a timely

manner and should EPA determine that promulgated versions of the Update IVA methods are needed for compliance purposes, EPA will publish a notice of proposed rulemaking and a final rulemaking for the update.

V. Request for Comment on the Removal of Chapter Eleven From SW–846

The hazardous waste management regulations for permitted facilities (40 CFR 264) were promulgated in July 1982 under subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Subpart F under these regulations, *Releases From Solid Waste Management Units*, sets forth performance standards for ground-water monitoring systems at permitted hazardous waste land disposal facilities. A manual was prepared by the Office of Solid Waste to provide guidance for implementing the ground-water monitoring regulations for regulated units contained in 40 CFR 264, subpart F, and the permitting standards of 40 CFR 270. In 1986, EPA released two documents relating to RCRA ground-water monitoring, specifically the ''RCRA Groundwater Monitoring Technical Enforcement Guidance'' (TEG) and Chapter Eleven of SW–846, entitled ''Groundwater Monitoring.'' In November 1992, the Agency's Groundwater Monitoring Program revised the technical procedures for TSDF compliance with ground-water monitoring requirements and documented the procedures in a 1992 document entitled ''RCRA Groundwater Monitoring Draft Technical Guidance.'' However, the 1986 version of Chapter Eleven of SW–846 was not updated at that time in conjunction with the 1992 ground-water monitoring guidance, and thus the chapter remains out of date. At the present time, most of the regulated community is using the ground-water monitoring guidance issued in 1992 as the standard for RCRA ground-water monitoring compliance. Therefore, EPA would like to remove the outdated Chapter Eleven of SW–846, and replace it with a referral to the most current version of the ground-water monitoring guidance originally issued by the Office of Solid Waste in 1992. The Agency is requesting comment on this approach. EPA is currently updating the November 1992 ground-water monitoring guidance. However, Chapter 11 will remain in SW–846 until the rule to remove the required use of SW–846 has been finalized.

Dated: April 24, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–12309 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253

[DFARS Case 97–D306]

Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend Defense Federal Acquisition Regulation Supplement (DFARS) guidance on simplified acquisition procedures for consistency with the reorganization of simplified acquisition procedures in the Federal Acquisition Regulation (FAR), and for consistency with FAR amendments that implemented provisions of the Federal Acquisition Streamlining Act of 1994.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 7, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350 Please cite DFARS Case 97–D306 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Susan Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revised DFARS Part 213 to conform to the revision of FAR Part 13 that was published as Item IV of Federal Acquisition Circular 97–03 on December 9, 1997 (62 FR 64916). The rule also amends other parts of the DFARS for consistency with FAR amendments that implemented provisions of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) pertaining to simplified acquisition procedures (e.g., replacement of the term ''small purchase'' with the term ''simplified acquisition''). The FAR amendments were published as Item III of Federal Acquisition Circular 90–29 (60 FR 34741, July 3, 1995) and Item II of Federal Acquisition Circular 90–40 (61 FR 39189, July 26, 1996).

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily consists of conforming DFARS amendments and internal Government procedures to implement existing FAR guidance pertaining to purchases at or below the simplified acquisition threshold. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D306 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253

Government procurement.

Michele Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670–2 is amended by revising paragraph (c) to read as follows:

204.670–2 Reportable contracting actions.

* * * * *

(c) Summarize on the monthly DD Form 1057, in accordance with the instruction in 253.204–71(a)(3), contracting actions that support 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(7), and that obligate or deobligate funds exceeding $25,000 but not exceeding $200,000.

* * * * *

204.804–1 [Amended]

3. Section 204.804–1 is amended in paragraph (2) by removing the phrase ''small purchase'' and inserting in its place the phrase ''simplified acquisition''.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Section 208.405–2 is revised to read as follows:

208.405–2 Order placement.

(1) When ordering from schedules, ordering offices—

(i) May use DD Form 1155, Order for Supplies or Services, to place orders for—

(A) Commercial items at or below the simplified acquisition threshold; and

(B) Other than commercial items at any dollar value (see 213.307);

(ii) Shall use SF 1449, Solicitation/Contract/Order for Commercial Items, to place orders for commercial items exceeding the simplified acquisition threshold (see FAR 12.204); and

(iii) May use SF 1449 to place orders for other than commercial items at any dollar value.

(2) Schedule orders may be placed orally if—

(i) The Contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the orders office). The ticket must include the—

(A) Contract number;

(B) Order number under the contract;

(C) Date of order;

(D) Name and title of person placing the order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment; and

(ii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—

(A) An individual invoice with a receipted copy of the delivery ticket;

(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or

(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds in accordance with 213.305 is authorized when—

(i) The order does not exceed the threshold at FAR 13.305–3(a); and

(ii) The contractor agrees to the procedure.

(4) The Governmentwide commercial purchase card may be used to place schedule orders in accordance with agency procedures.

5. Section 208.7204 is amended by revising paragraph (a) to read as follows:

208.7204 Procedures.

(a) Except as otherwise provided in FAR or DFARS, planned producers shall be solicited for all acquisitions of their planned items, when the acquisition exceeds the simplified acquisition threshold.

* * * * *

6. Section 208.7305 is amended by revising paragraph (a)(3) to read as follows:

208.7305 Contract clause.

(a) * * *

(3) For acquisitions at or below the simplified acquisition threshold.

* * * * *

7. Part 213 is revised to read as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

Sec.
213.270 Use of the Governmentwide commercial purchase card.

Subpart 213.3—Simplified Acquisition Methods

213.302 Purchase orders.
213.302–3 Obtaining contractor acceptance and modifying purchase orders.
213.302–5 Clauses.
213.303 Blanket purchase agreements (BPAs).
213.303–5 Purchases under BPAs.
213.305 Imprest funds and third party drafts.
213.305–1 General.
213.305–3 Conditions for use.
213.306 SF 44, Purchase Order—Invoice—Voucher.
213.307 Forms.

Subpart 213.4—Fast Payment Procedure

213.402 Conditions for use.

Authority: 48 U.S.C. 421 and 48 CFR Chapter 1.

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

213.270 Use of the Governmentwide commercial purchase card.

(a) Do not award a purchase order or other contract in an amount at or below the micro-purchase threshold for a commercial item unless a written determination is made by a member of the Senior Executive Service, a flag officer, or a general officer, that—

(1)(i) The source or sources available for the supply or service do not accept the Governmentwide commercial purchase card (or other methods of purchase specified in paragraphs (c)(1) through (c)(3) of this section; and

(ii) The contracting activity is seeking a source that accepts the Governmentwide commercial purchase card (or other methods of purchase specified in paragraphs (c)(1) through (c)(3) of this section); or

(2) The nature of the supply or service necessitates use of a purchase order or other contract so that terms and conditions can be specified (e.g., purchase of safety critical parts that require Government source inspection).

(b) To prevent mission delays, authority to make the written determination specified in paragraph (a) of this section may be delegated to the level of the senior local commander or director.

(c) The written determination specified in paragraph (a) of this section is not required when—

(1) Placing an order or call against an existing contract or agreement;

(2) Using a purchase method, other than a purchase order, authorized by FAR part 13;

(3) Awarding a purchase order or other contract that uses the Governmentwide commercial purchase card as the method of payment; or

(4) Awarding a purchase order or other contract that will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) The requirements of this section do not preclude the use of required sources of supply.

Subpart 213.3—Simplified Acquisition Methods

213.302 Purchase orders.

213.302–3 Obtaining contractor acceptance and modifying purchase orders.

(1) Require written acceptance of purchase orders for classified acquisitions.

(2) Normally, unilateral modifications (see FAR 43.103) will be used for—

(i) No-cost amended shipping instructions if—

(A) The amended shipping instructions modify a unilateral purchase order; and

(B) The contractor agrees orally or in writing; and

(ii) Any change made before work begins if—

(A) The change is within the scope of the original order;

(B) The contractor agrees;

(C) The modification references the contractor's oral or written agreement; and

(D) Block 13D of Standard Form 30, Amendment of Solicitation/Modification of Contract, is annotated to reflect the authority for issuance of the modification.

(3) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clause at 252.243–7001, Pricing of Contract Modifications, in the Standard Form 30, and obtain the contractor's acceptance by signature on the Standard Form 30.

213.302–5 Clauses.

Use the clause at 252.243–7001, Pricing of Contract Modifications, in all bilateral purchase orders.

213.303 Blanket purchase agreements (BPAs).

213.303–5 Purchases under BPAs.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements of FAR part 6 for any action not using simplified acquisition procedures.

213.305 Imprest funds and third party drafts.

213.305–1 General.

(1) As a matter of policy, DoD does not support the use of cash payments from imprest funds. This policy is based, in part, on the mandatory electronic funds transfer requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

(2) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts.

(3) Third party draft accounts, when established in accordance with DoD 7000.14–R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures—

(i) Provide an alternative to cash and U.S. Treasury checks when the use of Government purchase or travel cards is not feasible;

(ii) Eliminate the need for cash on hand for imprest fund transactions; and

(iii) Give issuing activities the flexibility to issue low-volume and low-dollar value payment on site.

213.305–3 Conditions for use.

(d)(i) Use of imprest funds—

(A) Must comply with the conditions stated in—

(1) DoD 7000.14–R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and

(2) The Treasury Financial Manual, Part 4, Chapter 3000, Section 3020; and

(B) Except as provided in paragraph (d)(ii) of this subsection, requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller).

(ii) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support or 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(7); and

(B) Classified transactions.

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) The micro-purchase limitation applies to all purchases, except that purchases not exceeding the simplified acquisition threshold may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers 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(7); and

(C) Transactions in support of intelligence and other specialized activities addressed by part 2.7 of Executive Order 12333.

213.307 Forms.

(a) If SF Form 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(i) of this section.

(b)(i) Use DD Form 1155, Order for Supplies or Services, for purchases made using simplified acquisition procedures.

(A) The DD Form 1155 serves as a—

(*i*) Purchase order or blanket purchase agreement;

(*ii*) Delivery order or task order;

(*iii*) Receiving and inspection report;

(*iv*) Property voucher;

(*v*) Document for acceptance by the supplier; and

(*vi*) Public voucher, when used as—

(*A*) A delivery order;

(*B*) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm-fixed-price has been established; or

(*C*) A purchase order for acquisitions using simplified acquisition procedures.

(B) The DD Form 1155 is also authorized for use for—

(*i*) Orders placed in accordance with FAR Subparts 8.4, 8.6, 8.7, and 16.5; and

(*ii*) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(ii) Do not use Optional Form 347, Order for Supplies or Services, or Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(iii) Use Standard Form 30, Amendment of Solicitation/Modification of Contract to—

(A) Modify a purchase order; or

(B) Cancel a unilateral purchase order.

Subpart 213.4—Fast Payment Procedure

213.402 Conditions for use.

(a) Individual orders may exceed the simplified acquisition threshold for—

(i) Brand-name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

PART 216—TYPES OF CONTRACTS

8. Section 216.203–4 is amended in the introductory text of paragraph (a) by adding a comma after the word ''Supplies''; and by revising paragraphs (a)(i) and (b)(i) to read as follows:

216.203–4 Contract clauses.

(a) * * *

(i) The total contract price exceeds the simplified acquisition threshold; and

* * * * *

(b) * * *

(i) The total contract price exceeds the simplified acquisition threshold; and

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

9. Section 217.7302 is amended by revising paragraph (b) to read as follows:

217.7302 Procedures.

* * * * *

(b) The requirement in paragraph (a) of this section does not apply to contracts—

(1) For commercial items; or

(2) Valued at or below the simplified acquisition threshold.

10. Section 217.7504 is amended by revising paragraph (a)(2) to read as follows:

217.7504 Limitations on price increases.

* * * * *

(a) * * *

(2) Departments and agencies may specify an alternate percentage or percentages for contracts at or below the simplified acquisition threshold.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

11. Section 219.201 is amended by revising paragraph (c)(9)(A) to read as follows:

§ 219.201 General policy.

* * * * *

(c) * * *

(9) * * *

(A) Reviewing and making recommendations for all acquisitions over $10,000, except small business reservations;

* * * * *

12. Section 219.7001 is amended in paragraph (b) by revising the introductory text and paragraph (b)(1) to read as follows:

§ 219.7001 Applicability.

* * * * *

(b) Do not use the evaluation preference in acquisitions that—

(1) Use simplified acquisition procedures;

* * * * *

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

13. Section 223.570–4 is amended by revising paragraph (b) to read as follows:

§ 223.570–4 Contract clause.

* * * * *

(b) Do not use the clause in solicitations and contracts—

(1) For commercial items;

(2) When performance or partial performance will be outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

PART 225—FOREIGN ACQUISITION

14. Section 225.105 is amended by revising paragraph (5)(ii)(B) to read as follows:

§ 225.105 Evaluating offers.

* * * * *

(5) * * *

(ii) * * *

(B) ''Domestically produced or manufactured products'' under small business set-asides or small business reservations; and

* * * * *

15. Section 225.770–3 is amended by revising paragraph (a) to read as follows:

§ 225.770–3 Exceptions.

* * * * *

(a) Purchases at or below the simplified threshold;

* * * * *

PART 237—SERVICE CONTRACTING

§ 237.7302 [Amended]

16. Section 237.7302 is amended in the third sentence by removing the reference ''13.105'' and inserting in its place the reference ''13.003(b)(1)''.

PART 242—CONTRACT ADMINISTRATION

§ 242.203 [Amended]

17. Section 242.203 is amended in paragraph (a)(i)(P) by adding, after the semicolon, the word ''and''; in paragraph (a)(i)(Q) by removing ''; and'' and inserting a period in its place; and by removing paragraph (a)(i)(R).

PART 246—QUALITY ASSURANCE

18. Section 246.370 is amended by revising paragraph (b)(1) to read as follows:

§ 246.370 Material inspection and receiving report.

* * * * *

(b) * * *

(1) Contracts awarded using simplified acquisition procedures;

* * * * *

PART 247—TRANSPORTATION

19. Section 247.271–3 is amended by revising paragraphs (b)(1) and (b)(2)(iv)(B) to read as follows:

§ 247.271–3 Procedures.

* * * * *

(b) * * *

(1) Excess requirements are those services that exceed contractor capabilities available under contracts. Use simplified acquisition procedures to satisfy excess requirements.

(2) * * *

(iv) * * *

(B) Using simplified acquisition procedures.

* * * * *

20. Section 247.573 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 247.573 Solicitation provision and contract clauses.

(a) * * *

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b) * * *

(2) Those with an anticipated value at or below the simplified acquisition threshold.

* * * * *

PART 253—FORMS

§ 253.204–70 [Amended]

21. Section 253.204–70 is amended in the introductory text of paragraph (b)(13)(i)(E) and in the first sentence of paragraph (b)(13)(i)(G) by removing the reference ''13.202(c)(3)'' and inserting in its place the reference ''13.303–2(c)(3)''; and in paragraph (d)(5)(iv)(A)*(2)* by removing the reference ''13.105'' and inserting in its place the reference ''13.003(b)(1)''.

22. Section 253.204–71 is amended by revising paragraph (a)(3) introductory text and paragraphs (g)(2)(ii)(C) and (i)(1) to read as follows:

§ 253.204–71 DD Form 1057, Monthly Contracting Summary of Actions, $25,000 or Less.

(a) * * *

(3) report actions of $25,000 or less 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(7), in accordance with the instructions in paragraphs (c) through (j) of this subsection. Report actions exceeding $25,000 but not exceeding $200,000 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(7), on the monthly DD Form 1057 as follows:

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(C) Block E2c, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1) when award is to an SDB, but a preference was not applied.

* * * * *

(i) * * *

(1) Enter the total number and dollar value of actions 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(7). The numbers entered here are a breakout of the numbers already entered in Sections B and C.

* * * * *

23. Section 253.213 is amended by revising the section heading; by redesignating paragraph (e) as paragraph (f); and in newly designated paragraph

(f) by revising the introductory text and paragraph (f)(i) to read as follows:

253.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

(f) DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347; and Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.307(b)(i) and in accordance with the instructions at 253.213–70.

* * * * *

[FR Doc. 98–12268 Filed 5–7–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 042898B]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on May 20 and 21, 1998, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, May 20, 1998, at 10 a.m. and on Thursday, May 21, 1998, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Seaport Inn, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Wednesday, May 20, 1998

After introductions, the Council will discuss and seek approval of the final Monkfish Fishery Management Plan (FMP) prepared jointly with the Mid-Atlantic Fishery Management Council. During the Groundfish Committee Report to follow, the committee will recommend approval of the public hearing document for Amendment 9 to the Northeast Multispecies FMP and the accompanying Draft Supplemental Environmental Impact Statement (DSEIS). Measures in the document include revised overfishing definitions and the specification of optimum yield to be consistent with the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), a prohibition or possession limit for Atlantic halibut, a possession limit for winter flounder in the Southern New England and Mid-Atlantic stock areas, limits on the use of square mesh in the Gulf of Maine and on Georges Bank to reduce juvenile flounder bycatch, a 1–inch increase in the winter flounder minimum size, a postponement of the use of electronic vessel monitoring systems while resolving outstanding related issues, prohibition of the use of ''streetsweeper'' trawl gear, modification the Gulf of Maine cod trip limit requirement that a vessel remain in port to account for an overage, and application of the Gulf of Maine cod trip limit ''running clock'' system to all fisheries managed under a per-day trip limit.

During the afternoon session, the Habitat Committee will seek approval of proposed essential fish habitat designations and alternatives for red hake, cod, witch flounder, ocean pout, and Atlantic herring for purposes of preparing a public hearing document. The committee chairman will also provide an update on progress to develop alternatives for other Council-managed species. Before adjourning for the day, the Aquaculture Committee will recommend final action on a framework adjustment to the Sea Scallop FMP that would extend the Westport Scallop Project closure for 18 months.

Thursday, May 21, 1998

The Council will seek approval of the Sea Scallop Amendment 7 public hearing document and DSEIS. Measures to be included in the document are: Days-at-sea (DAS) reductions, scallop area management, and a DAS leasing to be implemented by a future framework adjustment to the FMP. An industry-funded vessel buyout program will also be discussed. During the Whiting Committee Report, the Council will seek approval of measures for preparing a public hearing document and DSEIS for a whiting amendment to the Northeast Multispecies FMP. Major measures under consideration include a moratorium on commercial permits, whiting trip limits, closed areas, mesh size restrictions, 3–inch mesh areas, changes to the Cultivator Shoal fishery regulations, and limits on the amount of fish that can be brought in with a mesh less than the minimum size.

The Council will seek approval of a public hearing document and DSEIS for the Atlantic Herring FMP. Measures will include controlled access to the fishery, spawning area closures, vessel/dealer operator permit requirements, area management, both a target total allowable catch (TAC) and TAC that triggers a management action, vessel size limits, a prohibition on fishing for the purposes of meal production, limits on fishing time, and restrictions on fishing for roe. The Dogfish Committee will review recent committee discussions. The meeting will conclude with reports from the Council Chairman, Executive Director, Administrator, Northeast Region, NMFS (Regional Administrator), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission.

Announcement of an Experimental Fishery Application

The Regional Administrator is considering the authorization of an experimental fishery for silver hake (whiting) in the Gulf of Maine. The experimental fishery would help to determine appropriate gear type, area, and season for a small mesh fishery that would meet the bycatch criteria of the Northeast multispecies exempted fishery program. This experimental fishery would include modifications of the separator trawl experimental fishery conducted in the summers of 1995, 1996, and 1997. Exempted fishing permits to conduct experimental fishing would be issued to participating vessels to exempt them from DAS, mesh size, and other gear restrictions of the Northeast Multispecies Fishery Management Plan.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 4, 1998.

Gary C. Matlock,

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

[FR Doc. 98–12255 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 89

Friday, May 8, 1998

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.

ARMS CONTROL AND DISARMAMENT AGENCY

Determination to Close Meetings of the Director's Advisory Committee

May 4, 1998.

The Director's Advisory Committee (DirAC) will hold meetings in Washington, D.C., on May 11 and 12, 1998, and at Livermore, CA on June 8 and 9, 1998.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § 10(d) (1996), I have determined that the meetings may be closed to the public in accordance with 5 U.S.C. § 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12,958, 60 Fed. Reg. 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

This notice is being published less than 15 days before the first meeting day, because of recent changes in the location of the meetings.

John D. Holum,

Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 98–12436 Filed 5–6–98; 2:33 pm]

BILLING CODE 6820–32–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 8, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 5, 16, March 13 and 27, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 203, 2658, 2659, 12438 and 14897) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities 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 commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. 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 commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pen, Black, Ergonomic
M.R. 013
Pen, Push Cap, Black
M.R. 019
Pen, Retractable, Cushion Grip, Exec. ''Aristocrat''
7520–01–446–4500
7520–01–446–4503
7520–01–446–4504
7520–01–446–4505
Slacks, Woman's
8410–01–452–4900
8410–01–452–4901
8410–01–452–4902
8410–01–452–4903
8410–01–452–4904
8410–01–452–4905
8410–01–452–4906
8410–01–452–4907
8410–01–452–4908
8410–01–452–4909
8410–01–452–4910
8410–01–452–4911
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8410–01–452–4936
8410–01–452–4937
8410–01–452–4892
8410–01–452–4893
8410–01–452–4894
8410–01–452–4895
8410–01–452–4896
8410–01–452–4897
8410–01–452–4898
8410–01–452–4899
8410–01–452–6192
8410–01–452–6194

Services

Base Supply Center, (GSA Uncle Sam's Club Supply Center), Norfolk, Virginia.
Food Service, Great Lakes Naval Training Center, Galley 535, 928 and 1128, 2703 Sheridan Road, Great Lakes, Illinois.
Janitorial/Custodial, USARC Headquarters, Fort McPherson, Georgia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–12258 Filed 5–7–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 8, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (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.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the 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. 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 services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. 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 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 services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Dyess Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas.

Base Supply Center, Bangor Submarine Base, Bangor, Washington
NPA: Peninsula Services, Bremerton, Washington.

Base Supply Center, Naval Air Station, Whidbey Island, Washington
NPA: Peninsula Services, Bremerton, Washington.

Operation of Individual Equipment Element Store, Dyess Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–12259 Filed 5–7–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Processed Product Family of Forms; Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 7, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Steven Koplin, Fisheries Statistics and Economic Division (F/ST1), Office of Science and Technology, National Marine Fisheries Service, 1315 East-West Hwy, Silver Spring, MD 20910. (301) 713–2328.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a survey of fish and shellfish processing plants and firms that sell these products wholesale, and it asks for information on the volume and value of products processed. Wholesalers are asked to identify the top species sold. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et, seq.) as amended. Data from this survey are used in economic analyses to estimate the capacity and extent of which U.S. fish processors utilize domestic harvest.

II. Method of Collection

Form 88–13 is conducted annually via a survey form mailed to fish and shellfish processors. Form 88–13c is conducted monthly via a form mailed to fish reduction plants during the season.

III. Data

OMB Number: 0648–0018.

Form Number: 88–13 Fishery Products Report (Annual). 88–13c Fish Meal and Oil Report (Monthly).

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,240.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 620.

Estimated Total Annual Cost to Public: No cost to the public other than the time required to fill out the forms.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 19998

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12245 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region)

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 7, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98112, 206–526–6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

Preseason survey information collected from the groundfish industry helps provide (1) the capacity and extent to which U.S. fishing vessels will annually harvest the optimum yield specified for a fishery; (2) the portion of that optimum yield which will not be harvested by U.S. fishing vessels, and can therefore be made available to foreign vessels; and (3) the capacity and extent to which U.S. fish processors can annually process that portion of the optimum yield that will be harvested by U.S. vessels.

Pacific whiting, the species most often available to foreign and joint venture operations in the past, recently has become fully ''Americanized'' (processed by U.S. processors only). However, Americanization of other species is not assured, and therefore the need for the survey continues. In addition, there has been an increased need to determine the intent and capacity of segments of the domestic industry, particularly with respect to resource allocation among user groups. Therefore, the survey continues to be an appropriate and important tool to assist in groundfish management.

II. Method of Collection

The survey consists of a written data collection instrument for U.S. fish processors, and U.S. fishers of groundfish off the coasts of Washington, Oregon, and California. The survey form will be returned to NMFS (NWR) by mail, fax, electronic mail, or in person.

III. Data

OMB Number: 0648–0243.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit (owners or operators of vessels that catch or process fish in ocean waters 0–200 nautical miles offshore Washington, Oregon, and California).

Estimated Number of Respondents: 60.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12246 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Individual Fishing Quota Program for Pacific Halibut and Sablefish

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 7, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Lepore, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (907–586–7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants of the Individual Fishing Quota Program for Pacific halibut and sablefish managed by the National Marine Fisheries Service (NMFS), Alaska Region, are required to report certain information to NMFS. This information is used for monitoring and managing Pacific halibut and sablefish caught with fixed gear in and off Alaska's waters for purposes of conservation of the fisheries and enforcement of fisheries regulations.

II. Method of Collection

Information is collected by forms and electronic reporting. Forms are used for Notification of Inheritance, Application for Transfer, Corporation or Partnership Eligibility, Registered Buyer Application, Application for Additional Card, Shipment Report, Application for

Replacement, and Appeals. Electronic reporting is used for Prior Notice of Landing, Permission to Land, Vessel Clearance, Landing Report, and Transshipment Notice.

III. Data

OMB Number: 0648–0272.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals, business or other for-profit organizations.

Estimated Number of Respondents: 65,120.

Estimated Time Per Response: 4 hours for Appeals, 1 hour for Notification of Inheritance, 2 hours for Application for Transfer, 2 hours for Corporation or Partnership Eligibility, 0.5 hour for Registered Buyer Application, 0.5 hour for Application for an Additional Card, 0.2 hour for Prior Notice of Landing, 0.1 hour for Permission to Land, 0.1 hour for Vessel Clearance, 0.2 hour for Landing Report, 0.1 hour for Transshipment Notice, 0.2 hour for Shipment Report, and 0.5 hour for Application for Replacement.

Estimated Total Annual Burden Hours: 16,670 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12247 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request by Flores El Talle S.A., the Department of Commerce is conducting a changed circumstances review to confirm that the revocation granted to the Flores Colombianas Group is applicable equally to Flores El Talle S.A. The antidumping duty order was revoked with respect to the Flores Colombianas Group in the fourth administrative review. In this changed circumstances review, the Department of Commerce has examined in detail Flores El Talle S.A. and its relationship with the Flores Colombianas Group. As a result of this review, the Department of Commerce preliminarily finds that Flores El Talle S.A. is a member of the Flores Colombianas Group and, as such, is subject to the revocation which applies to the Flores Colombianas Group.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Stephanie Hoffman, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, United States Department of Commerce, Washington, DC 20230; telephone: (202) 482–5414 or (202) 482–4198, respectively.

Applicable Statute and Regulations

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. In addition, unless otherwise indicated, all citations to section 351 of the regulations of the Department of Commerce (''the Department'') are to the current regulations, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

In the final results of the fourth administrative review (see 59 FR 15159; March 31, 1994), the antidumping duty order on certain fresh cut flowers from Colombia was revoked with respect to the Flores Colombianas Group, based on three consecutive administrative reviews in which the Department determined that the Flores Colombianas Group was not selling the subject merchandise at less than fair value in the United States.

During the ninth administrative review, Flores El Talle S.A. (''Flores El Talle'') notified the Department in an August 23, 1996, letter that the company had been created in the summer of 1991, within the context of the Flores Colombianas Group and that Flores El Talle and the Flores Colombianas Group share common ownership and management. The letter requested that the Department confirm that the revocation of the antidumping duty order with respect to the Flores Colombianas Group is applicable equally to Flores El Talle. In the final results of the ninth review, the Department determined that Flores El Talle had no entries during the POR, rescinded the review with respect to Flores El Talle, and stated that it would initiate a changed circumstances review to examine whether Flores El Talle should be subject to the revocation which applies to the Flores Colombianas Group (see, *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53303; October 14, 1997). The Department initiated the changed circumstances review on October 15, 1997 (62 FR at 53593). The Department is conducting this changed circumstances review in accordance with section 751(b) of the Act and 19 CFR 351.216(d) of the Department's regulations.

Scope of Review

The scope of the order under review is shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). Although the HTS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Preliminary Analysis

This review covers one producer of the subject merchandise, Flores El Talle, an entity created within the context of the Flores Colombianas Group, a group of producers and exporters. The

Department has revoked the order with respect to that group. The Department has examined the question of whether Flores El Talle should be assigned a cash deposit rate equal to the ''all others'' rate, or be subject to Flores Colombianas Group's revocation. If the Department determines that Flores El Talle should be collapsed with the other companies comprising the Flores Colombianas Group and treated as a single entity in the production and sale of the subject merchandise, its shipments would not be subject to suspension of liquidation or antidumping duty deposit requirements under this order because the revocation applicable to the Flores Colombianas Group would be applicable equally to Flores El Talle.

As stated above, the antidumping order was revoked with respect to the Flores Colombianas Group, effective May 31, 1994. During the three consecutive review periods on which the revocation was based (March 1, 1988 to February 28, 1991) the Flores Colombianas Group was comprised of four entities: (1) Agrosuba Ltda., (2) Flores Colombianas Ltda., (3) Jardines de los Andes SA, and (4) Productos El Cartucho SA. On July 18, 1991, Flores El Talle was set up to acquire the assets and liabilities of Flores El Cielo Ltda., a company that did not produce or export subject merchandise. Flores El Talle began to produce the subject merchandise in the second half of 1991.

The question under review is whether, after its inception, Flores El Talle's affiliation with the Flores Colombianas Group and the manner in which operations were conducted were such that Flores El Talle should be collapsed with the other companies already comprising the Flores Colombianas Group and treated as a single entity and, therefore, subject to the revocation applicable to the Flores Colombianas Group.

According to section 351.401(f) of the Department's regulations, in order for the Department to collapse two producers, *i.e.*, treat them as a single entity, the Department must find that, (1) the producers are affiliated under section 771(33) of the Act, (2) the producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, and (3) there is a significant potential for the manipulation of price or production (see also, *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997), (''*Collated Roofing Nails From Taiwan*'') and *Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Administrative Review*, 62 FR 17148, 17155 (April 9, 1997)).

First, we find that because Flores El Talle and the Flores Colombianas Group are under common ownership and control, these companies are affiliated under sections 771(33)(E) and (F) of the Act. (For more information on common ownership, management, and control of Flores El Talle and other members of the Flores Colombianas Group, see, Flores El Talle's August 23, 1996, submission.) Second, the evidence on the record demonstrates that Flores El Talle does have production facilities for similar or identical products. Although Flores El Talle is not currently a producer of the subject merchandise (due to soil infestation with ''fusarium oxysporium,'' Flores El Talle ceased production of the subject merchandise in December 1995), it still has the capability of producing the subject merchandise and substantial work would not be required in order to restructure production priorities (see, *Collated Roofing Nails From Taiwan*, 62 FR at 51436).

We also determine that the third criterion of our collapsing inquiry is met. According to section 351.401(f)(2) of the Department's regulations, in determining whether there is a significant potential for manipulation of price or production, the Department may consider factors such as (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether business operations are intertwined, such as through shared sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the two enterprises.

As stated previously, Flores El Talle has common ownership, management, and control with other companies in the Flores Colombianas Group. Flores El Talle has only existed in the context of the Flores Colombianas Group, and all five companies of the Flores Colombianas Group share information, supplement sales efforts, and coordinate pricing and business strategy with one another. Sales and marketing personnel for the subject merchandise are shared by all five members of the Flores Colombianas Group, and Flores El Talle has joint offices with two other companies in the Flores Colombianas Group, Agrosuba and Flores Colombianas Ltda., to handle purchasing, accounting and communication requirements.

Preliminary Results of the Review

Applying the evidence on the record to the collapsing inquiry set forth above, we find that (1) Flores El Talle and the Flores Colombianas Group are affiliated under sections 771(33)(E) and (F) of the Act; (2) the production facilities are essentially similar so that they would not require substantial work to restructure manufacturing priorities; and (3) there are intertwined business operations, common management and board members, and coordination of the production and sales strategies such that there exists significant potential for price or production manipulation.

Based on this analysis, we preliminarily determine that it is appropriate to collapse Flores El Talle into the Flores Colombianas Group. Therefore, we intend to treat Flores El Talle as part of the Flores Colombianas Group and apply the revocation from the antidumping duty order with respect to the Flores Colombianas Group to Flores El Talle. If this revocation is applied to Flores El Talle, it will apply to all unliquidated entries of this merchandise produced by Flores El Talle, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after May 31, 1994, which is the effective date of the revocation from the order for the Flores Colombianas Group. If the final results of this changed circumstances review remain unchanged, we will instruct the U.S. Customs Service to release any cash deposit or bond and liquidate the entries without regard for antidumping duties (*see*, 19 CFR 351.222(g)(4)).

Interested parties may request a hearing within ten days of publication of these preliminary results. If requested, a hearing will be held the 37th day after publication. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing case briefs. The case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3)(i). The Department will publish the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments. This changed circumstances review and notice are in accordance with 19 CFR 351.216.

Dated: May 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12205 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received a request from Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian) to conduct a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), which has a September anniversary date. In accordance with the Department's current regulations, we are initiating this administrative review.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Leah Schwartz or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3782 or (202)482–3020, respectively.

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 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Background

On March 27, 1998, the Department received a timely request, in accordance with section 751 (a)(2)(B) of the Act, and section 351.214 (c) of the Department's regulations, for a new shipper review of this antidumping duty order which has a September anniversary date.

Initiation of Review

In its request of March 27, 1998, Ningbo Nanlian certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (March 1, 1996 through August 31, 1996), and is not affiliated with any company which exported subject merchandise to the United States during the POI. Ningbo Nanlian further certified that its export activities are not controlled by the central government of the PRC.

In its March 27, 1998 request for review, Ningbo Nanlian submitted a statement from Yinxian No. 2 Freezing Factory (YFF), the producer/supplier of subject merchandise to Ningbo Nanlian, certifying that it is not affiliated with any exporter or producer who exported subject merchandise during POI. YFF further certified that its export activities are not controlled by the government of the PRC.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC. We intend to issue the final results of these reviews not later than 270 days from the publication of this notice.

The standard period of review (POR) in a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month. However, the Department may define the POR to cover the first exportation of a new shipper. See *Initiation of New Shipper Antidumping Duty Administrative Review: Certain Pasta from Italy,* 62 FR 8927 (February 27, 1997), and *Fresh and Chilled Atlantic Salmon from Norway: Initiation of New Shipper Antidumping Duty Administrative Review* 62 FR 28840 (May 28, 1997). Therefore, the POR for this review has been defined to include the month of March 1998.

Antidumping duty proceeding	Period to be reviewed
The PRC: Fresh Water Crawfish Tail Meat, A–570–848: Ningbo Nanlian Frozen Foods Company, Ltd	9/01/97—3/31/98

Concurrent with publication of this notice, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exporter by the company listed above, in accordance with 19 CFR 351.214(e).

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: April 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12204 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from Mexico. See Notice of Final Determination; Oil Country Tubular Goods from Mexico, 60 FR 33567 (June 28, 1995).

Within the past year, the Department has received two requests to revoke the antidumping duty (AD) order covering OCTG from Mexico as it pertains to drill pipe with tool joints attached (commonly referred to as finished drill pipe). One was a request by the International Association of Drilling

Contractors that the Department self-initiate a changed circumstances review. The other request came from the leading producer of finished drill pipe in the United States, Grant Prideco. The latter request was withdrawn.

We are initiating an antidumping duty changed circumstances administrative review to determine the extent of domestic industry support for continuing the antidumping duty order on OCTG from Mexico with regard to finished drill pipe.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: John K. Drury or Richard Weible, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3208 or (202) 482–1103, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1997, the International Association of Drilling Contractors (IADC) requested that the Department self-initiate a changed circumstances review with respect to finished drill pipe. On March 13, 1998, the Department responded to the IADCO request. On January 28, 1998, Grant Prideco, Inc. requested revocation of the AD order on Mexican OCTG with respect to finished drill pipe. The Department received letters in opposition to this second request from OMSCO Industries and Drill Pipe Industries, Inc. on February 12, 1998, and February 13, 1998, respectively. On March 16, 1998, Grant Prideco withdrew its request for a changed circumstances review.

Since the Department's response to IADC on March 13, 1998, parties have raised questions regarding whether substantially all of the domestic industry supports continuation of the AD order on OCTG from Mexico with respect to finished drill pipe. Therefore, in light of the request originally filed by Grant Prideco and the information available to the Department, the Department believes a changed circumstances review is warranted. The Department intends to examine thoroughly the domestic producers of the like product to determine which companies are no longer interested in the portion of the order with respect to finished drill pipe. The Department will conduct this review as expeditiously as possible, allowing opportunity for all parties to comment. The Department will not revoke the order, in part, unless domestic producers accounting for substantially all of the like product have expressed lack of interest in maintaining the order with respect to drill pipe. The Department interprets ''substantially all'' to mean at least 85 percent of domestic production of the like product. This review is to determine the level of support of domestic producers of the like product for maintaining this order with respect to finished drill pipe.

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 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations.

Scope of the Review

The merchandise subject to this changed circumstances review, is finished oil well drill pipe with tool joints attached. This merchandise is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 8431.43.8010 as ''Parts suitable for use solely or principally with the machinery of headings 8425 to 8430, [o]f machinery of heading 8426, 8429 or 8430: [p]arts for boring or sinking machinery of subheading 8430.41 or 8430.49: [o]ther: [o]f oil and gas field machinery.'' Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Order Administrative Review

Pursuant to section 751(b)(1) of the Tariff Act, the Department will conduct a changed circumstances administrative review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In accordance with section 751(b) and 19 CFR 351.216(b)(4) and 19 CFR 351.216(d), we are initiating a changed circumstances administrative review. We invite all parties to provide comments on whether domestic producers of the like product no longer have an interest in maintaining the order with respect to finished drill pipe from Mexico within seven days of publication of this notice of initiation.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review, in accordance with 19 CFR 351.216(b)(4) and 19 CFR 351.221(c)(3). The Department will issue its final results of review in accordance with 19 CFR 351.216(e). All written comments must be submitted in accordance with 19 CFR 351.303 and must be served on all interested parties on the Department's service list in accordance with the same provision.

This notice is in accordance with section 751(b)(1) of the Tariff Act and section 351.221(b)(1) of the Department's regulations.

Dated: May 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12203 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle From Japan: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial recission of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioner, the American Chain Association, and three manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty finding on roller chain, other than bicycle from Japan. We have preliminarily determined that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Because one respondent did not permit verification of its questionnaire responses and two other respondents failed verification, we based the margins for these three companies on the facts available, in accordance with 776(a)(2) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the

issue, (2) a brief summary of the arguments not to exceed five pages, and (3) a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Cameron Werker at (202) 482–3874 or Ron Trentham at (202) 482–4793, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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 the provisions codified at 19 CFR Part 353 (April 1, 1997).

Background

On April 12, 1973, the Department published in the **Federal Register** an antidumping finding on roller chain, other than bicycle from Japan (roller chain) (38 FR 9926). On April 2, 1997, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping finding for the period of review (POR), April 1, 1996, through March 31, 1997 (62 FR 15655). On April 24, 1997, and April 29, 1997, we received requests for administrative review of this antidumping finding from one reseller of roller chain from Japan to the United States, Daido Tsusho Company Ltd./Daido Corporation (DT), and three manufacturers/exporters of roller chain from Japan: (1) Daido Kogyo Company Ltd. (DK); (2) Enuma Chain Mfg. Company (Enuma); and (3) Izumi Chain Mfg. Company Ltd., (Izumi). On April 28, 1997, the petitioner, the American Chain Association (ACA), requested an administrative review of these same entities, as well as six other manufacturers/exporters and five other resellers of roller chain from Japan to the United States. The six other manufacturers/exporters are: (1) Hitachi Metals Techno Ltd. (HMTL); (2) Pulton Chain Company Inc. (Pulton); (3) R.K. Excel Company Ltd. (RK); (4) Kaga Chain Manufacturer (Kaga); (5) Oriental Chain Company (OCM); and (6) Sugiyama Chain Company, Ltd. (Sugiyama). The five other resellers are: (1) Alloy Tool Steel Inc. (ATSI); (2) HMTL/Hitachi Maxco Ltd. (Hitachi Maxco); (3) Nissho Iwai Corporation (NIC); (4) Peer Chain Company (Peer); and (5) Tsubakimoto Chain Co./U.S.-Tsubaki (Tsubakimoto). On May 21, 1997, the Department published a ''Notice of Initiation of Administrative Review'' (62 FR 27720) covering the POR April 1, 1996, through March 31, 1997, for the above manufacturers/exporters/resellers (collectively, the respondents).

On June 18, 1997, we issued antidumping questionnaires to the respondents. The Department received questionnaire responses in July 1997, August 1997, and September 1997. We issued supplemental questionnaires in August 1997, September 1997, and December 1997. We received responses to these supplemental questionnaires in September 1997, October 1997, December 1997, January 1998, and February 1998.

Partial Recissions

As a result of facts examined during the course of the POR, we have determined that Peer made no shipments of subject merchandise to the United States during the POR. We confirmed with the United States Customs Service that Peer did not have entries of subject roller chain during the POR. Therefore, we are rescinding the review with respect to this company.

HMTL is affiliated to a roller chain producer subject to this annual review. During this POR, HMTL and HMTL/Hitachi Maxco made no shipments of roller chain to the United States. We confirmed with the United States Customs Service that HMTL and HMTL/Hitachi Maxco did not have entries of subject roller chain during the POR. Consequently, the issue of a separate review rate for HMTL or HMTL/Hitachi Maxco is moot and we are rescinding the review for this purpose with respect to these parties.

DT sold roller chain produced by Enuma and DK during the POR. We examined the information on the record and have determined that, with respect to sales of merchandise manufactured by Enuma, DT is not a reseller as defined in 19 CFR 353.2(s) because Enuma had knowledge at the time of sale to DT that the roller chain it produced was destined for sale in the United States. Therefore, for sales by DT of Enuma-manufactured products, we are using the prices between Enuma and DT as United States prices and including these sales in the margin calculations for Enuma. With regard to DT sales of DK-produced merchandise, since DT is affiliated with DK pursuant to Section 771(33) of the Act, we are including all sales of DK-produced merchandise by or through DT in the margin calculations for DK. Under these circumstances, we did not have a basis to consider DT for a separate rate in this POR and are rescinding the review for this purpose with respect to DT.

RK and NIC exported, and ATSI imported, roller chain produced by RK during the POR. In selling roller chain to NIC (RK's affiliated trading company in Japan), RK has knowledge that these roller chain sales are destined for the United States. All of NIC's sales to the United States of RK-produced merchandise are made through ATSI (NIC's affiliated U.S. reseller). For purposes of these sales, we have treated RK, NIC, and ATSI as affiliated parties pursuant to section 771(33) of the Act. We used United States sales of RK-produced merchandise through NIC in our margin analysis for RK. RK also sells its merchandise directly to ATSI in the United States, who in turn sells the merchandise to unaffiliated U.S. customers. We also used these transactions in our margin analysis for RK. In the absence of other sales, we did not consider ATSI and NIC for separate rates and are rescinding the reviews for this purpose for these entities.

Preliminary Partial Rescission

Tsubakimoto received *de minimis* margins in three consecutive administrative reviews covering the period 1979–1983 and in an ''update'' administrative review conducted for the period 1986–1987. In the final results of the 1986–1987 review, the Department stated its intent to revoke the finding with respect to Tsubakimoto. *See Final Results of Antidumping Duty Administrative Review and Intent to Revoke in Part: Roller Chain, Other Than Bicycle, From Japan,* 54 FR 3099 (January 23, 1989). At the time of publication of its intent to revoke in part, the Department was ordered by the Court of International Trade not to revoke the finding with respect to Tsubakimoto pending a decision on a matter before the Court regarding one of the reviews for the period 1979–1983. On May 15, 1989, the Court dismissed this case, thereby allowing the Department to proceed with revocation in part, with respect to Tsubakimoto. On August 14, 1989, the Department revoked Tsubakimoto from the finding on roller chain. *See Revocation in Part of Antidumping Finding: Roller Chain, Other than Bicycle, From Japan,* 54 FR 33259.

On April 28, 1997, the ACA requested that the Department conduct an administrative review of the sales made

by Tsubakimoto to the United States. The ACA stated that it believes Tsubakimoto is selling Japanese roller chain to U.S. customers that is manufactured by companies that are covered by the roller chain finding. The ACA stated that its request does not cover sales of roller chain produced by Tsubakimoto itself but rather is limited to roller chain manufactured by other Japanese producers. We solicited comments from Tsubakimoto and the ACA concerning this issue.

In its submissions concerning this issue, the ACA stated that the Department's revocation of Tsubakimoto applies only to merchandise that has been both produced and exported by Tsubakimoto because the 1989 revocation notice regarding Tsubakimoto stated that ''[t]his partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983.'' (*See* 54 FR 33259 (August 14, 1989)). Tsubakimoto responded by providing evidence indicating that during the 1986–1987 update review, the review upon which the Department determined to revoke in part, the Department based its *de minimis* margin calculation on sales to the United States made by Tsubakimoto of roller chain both produced by Tsubakimoto itself and purchased from two other Japanese manufacturers.

After analyzing all the comments received in regard to this issue, the Department preliminarily determines that the 1989 notice of revocation in part applies to Tsubakimoto in both its capacity as a manufacturer/exporter and reseller/exporter of roller chain. The evidence on the record demonstrates the Department revoked the company Tsubakimoto. By revoking Tsubakimoto as a company, the Department applied the revocation to the manufacturer/exporter and reseller/exporter operations the company Tsubakimoto conducts. Although the ''manufactured and exported'' language used by the Department in the 1989 revocation notice could be read to limit Tsubakimoto's revocation to roller chain manufactured by Tsubakimoto, the Department has preliminarily determined that Tsubakimoto's revocation also applies to its reseller function because the de minimis margin calculated in the 1986–1987 administrative review, which is the foundation of the revocation, included sales made by Tsubakimoto of roller chain it purchased from two other Japanese manufacturers. In addition, the Department's determinations in other administrative proceedings concerning roller chain from Japan indicate that Tsubakimoto was revoked as a manufacturer/exporter and reseller/exporter. Therefore, the Department's revocation was based upon Tsubakimoto's pricing practices as both a manufacturer/exporter and reseller/exporter. For the reasons discussed above, we are preliminarily rescinding this review with respect to Tsubakimoto.

As provided for in section 353.54(e) of the Commerce Regulations which were in effect at the time of the tentative determination to partially revoke the order, Tsubakimoto agreed in writing to an immediate suspension of liquidation and reinstatement of the finding (as an order) if circumstances develop which indicate that roller chain, other than bicycle, manufactured and exported to the United States by Tsubakimoto is being sold by the firm at less than fair value (LTFV). *See* 48 FR 39674 (Sept. 1, 1983). If the Department determines, from information available to it either from submissions or other sources, that circumstances have developed which indicate subject merchandise is being sold by Tsubakimoto, or that Tsubakimoto is facilitating the sale of subject merchandise, at less than normal value in the United States, the Department will examine whether the elements necessary for reinstatement of the finding exist at that time.

Although we are preliminarily rescinding this review with respect to Tsubakimoto, the Department will continue to review this issue and encourages interested parties to comment on the appropriateness of our determination.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On August 22, 1997, the Department extended the time limit for the preliminary and final results of this case. *See Notice of Extension of Time Limits of Antidumping Duty Administrative Review*, 62 FR 44643 (August 22, 1997).

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Verification

As provided in Section 782(i) of the Act, we verified information provided by two respondents, OCM and Izumi. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports placed on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use, subject to section 782(d), FA in reaching the applicable determination.

Section 782(d) provides certain conditions that must be satisfied before the Department may, subject to subsection (e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information

does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (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.

2. Selection of Adverse Facts Available

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 a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* the Statement of Administrative Action (SAA) at 870. To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b), the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

A. Total Facts Available

Pulton

In this case, Pulton submitted its questionnaire responses by the established deadlines and agreed to verification of its responses from March 16–20, 1998. Subsequently, however, prior to verification, it informed the Department that it would not allow verification of its responses. Because the Department was unable to verify the submitted information, as required by section 782(i) of the Act, the Department had no authority to rely upon that unverified information in making its determination; thus section 776(a) of the Act mandates that the Department use facts available in making its determination vis-a-vis Pulton. Further, by refusing to allow verification, Pulton also significantly impeded the instant review, a result which section 776(a)(2)(C) and (D) require be addressed with the use of facts available. Although referenced under section 776(a), Section 782(d) of the Act concerns deficient submissions and thus is not applicable to a verification refusal.

As noted above, in selecting facts otherwise available, the Department may, pursuant to section 776(b) the Act, 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 requests for information. Where, as here, the respondent does not allow the Department officials to conduct verification of submitted information, it is deemed uncooperative, which constitutes grounds for applying adverse facts available. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Venezuela*, 63 FR 8946, 8947 (February 23, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania*, 61 FR 24274, 24275 (May 14, 1996). As explained above, although Pulton responded to the Department's requests for information, it refused to undergo verification, thereby preventing the Department from verifying the accuracy and completeness of the information it had submitted. Pulton's refusal to permit the Department to verify the information in this review demonstrates that it failed to cooperate by not acting to the best of its ability particularly in light of the fact that Pulton has participated in numerous administrative reviews and is generally familiar with the verification process. As Pulton indicated, it decided not to allow verification in this review because it would require two employees to spend two weeks dealing with the verification and its preparation. Pulton did not indicate that verification was impossible. Thus, consistent with the Department's practice in cases where a respondent withdraws its participation in a proceeding, in selecting facts available for Pulton in this review, an adverse inference is warranted.

In light of *Pulton Chain Co., Inc.* v. U.S., Slip Op. 97–162 Court No. 96–12–02877 (December 1, 1997), we are assigning to Pulton an FA margin of 42.48 percent, the rate calculated for Kaga in the instant review. For a more detailed discussion of this issue, *see the* April 30, 1998, Memorandum from The Senior Director, AD/CVD Enforcement, Group II, Office IV to the Acting Deputy Assistant Secretary, Import Administration, regarding the Determination of Facts Available for Pulton Chain Co., on file in room B–099, in the main Commerce Building.

OCM

With respect to OCM, although the Department issued several supplemental questionnaires requesting that OCM report appropriate home market comparison sales and appropriate cost information, OCM failed to comply with the Department's repeated requests. Moreover, at verification, OCM was unable to explain (1) numerous discrepancies with respect to its unreported home market sales, and (2) its cost calculation methodology. Because OCM failed to provide the necessary information in the form and manner requested, and the information could not be verified, section 776(a) directs the Department to apply, subject to section 782(d), facts otherwise available.

Pursuant to section 782(d), we provided OCM the opportunity to explain its deficiencies. Although we addressed deficiencies in OCM's original questionnaire response regarding its reporting of home market sales and variable costs of manufacturing, OCM still did not report all appropriate home market sales and cost information. Specifically, we were unable to determine the extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States because of various discrepancies between the information originally submitted and what we found at verification. OCM was unable to explain these discrepancies, or to identify which home market sales had not been reported. Further, OCM only reported variable costs of manufacture (VCOMs) for certain models of chain sold in both the U.S. and home markets during the POR. Because we can not determine the extent of unreported home market sales or the extent of unreported VCOMs, we are unable to determine whether we have the most appropriate home market sales for purposes of calculating a dumping margin.

Next, as noted we were unable to verify the accuracy and completeness of OCM's costs. We could not reconcile OCM's reported material and labor costs to its internal books and records and, therefore, could not establish whether the reported costs reflect actual costs for

the POR. Thus, we were unable to establish the credibility of the information contained in OCM's questionnaire responses.

Finally, OCM has not demonstrated on the record that it acted to the best of its ability in providing the necessary information. OCM elected not to follow the Department's clear instructions, which were enunciated in several questionnaires as well as during meetings with OCM's counsel, that OCM must report all appropriate home market sales and utilize an appropriate cost methodology. For example, the company used standard cost data to report model-specific material and labor costs, even though the Department does not accept standard costs for purposes of an antidumping analysis. Although we instructed OCM to calculate a variance between its standard and actual costs for the POR, it compared data that did not reflect either the period used to calculate the standard costs (April–September 1993) or the POR (April 1996-March 1997) to calculate this variance. In addition, OCM only calculated its variance for its four highest selling models of roller chain and applied a simple average of these variances to the standard costs reported for all other models.

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for OCM's submissions. Thus, the use of facts available is warranted in this case.

As discussed above, 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. In this context, however, although the respondent may not act to the best of its ability, it may be deemed sufficiently ''cooperative'' so that the Department may determine to apply FA that are less adverse. *See, e.g., Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53291–53292 (October 14,1997) *(Fresh Cut Flowers-Colombia (1997))*; *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Review,* 62 FR 2081, 2088 (January 15, 1997) (AFBs—1997).

As discussed above, we found significant problems with OCM's submissions. Although we addressed deficiencies in OCM's original questionnaire response regarding its reporting of home market sales and variable costs of manufacturing, OCM still did not report all appropriate home market sales and cost information. Specifically, we were unable to determine the extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States because of various discrepancies between the information originally submitted and what we found at verification. OCM was unable to explain these discrepancies at verification, or to identify which home market sales had not been reported. OCM did not provide in its questionnaire responses either the calculation methodology employed to calculate its reported costs or appropriate cost variances. In its attempts to update standard costs, OCM calculated variances based on costs that did not reflect the standard or actual costs for the POR. Accordingly, because OCM did not act to the best of its ability to comply with the request for information under section 776(b), an adverse inference is warranted. However, because OCM made substantial efforts to cooperate throughout the course of this review, we are resorting to facts available that are less adverse to the interests of OCM. *See, e.g., Fresh Cut Flowers-Colombia (1997).* Therefore, we are assigning OCM an adverse FA rate of 17.57 percent (a rate calculated for another respondent in a previous review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by OCM in future reviews of this proceeding. Since we are applying FA based on a margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act. *See* the section below on ''Corroboration of Information Used as Facts Available.'' For a detailed discussion of this issue, *see* Memorandum From The Senior Director, AD/CVD Enforcement, Group II, Office IV to the Acting Deputy Assistant Secretary, Import Administration regarding Determination of Facts Available Based on Results of Verification of Oriental Chain Manufacturing Co., (April 30, 1998), on file in room B–099, in the main Commerce Building.

Izumi

Although the Department issued several supplemental questionnaires requesting that Izumi report appropriate third country sales and appropriate cost information, Izumi failed to comply with the Department's repeated requests. Moreover, at verification, Izumi was unable to explain: (1) numerous discrepancies with respect to its unreported third country sales; and (2) its cost calculation methodology. Because Izumi failed to provide the necessary information in the form and manner requested, and the information could not be verified, section 776(a) directs the Department to apply, subject to section 782(d), facts otherwise available.

Pursuant to section 782(d), we provided Izumi the opportunity to explain its deficiencies in our sppplemental questionnaire of August 22, 1997, December 31, 1997, and December 19, 1997. In addition, we held a pre-verification conference with Izumi's counsel to ensure that Izumi understood our concerns so that its deficiencies could be remedied in time for verification.

Although Izumi submitted its questionnaire responses by the established deadlines, we were unable to verify their accuracy and completeness. First, we could not reconcile Izumi's reported material, labor, and overhead costs to its internal books and records and, therefore, could not establish whether the reported costs reflect actual costs for the POR. Thus, we were unable to establish the accuracy of the information contained in Izumi's questionnaire responses.

Second, although we addressed deficiencies in Izumi's original questionnaire response regarding its reporting of VCOM, Izumi still did not report all appropriate variable cost information. Specifically, Izumi did not report full POR costs for approximately 75 percent of its subject merchandise sold in the United States and to third countries. Izumi was unable to explain why these costs had not been reported. In addition, we discovered at verification that Izumi did not report all appropriate third country sales. Because we can not determine the extent of unreported comparison market sales of identical and similar merchandise, and we do not have accurate or complete VCOM's, we are unable to calculate constructed value (CV) or to determine whether we have the most appropriate third country sales, for purposes of calculating a dumping margin.

Finally, Izumi has not demonstrated on the record that it acted to the best of its ability in providing the necessary information. Izumi elected not to follow the Department's clear instructions, which were enunciated in several questionnaires, that Izumi must report all appropriate third country sales and an appropriate cost methodology. For

example, the company informed us at verification that it based its reported material and labor costs on outdated cost data from the initial antidumping investigation in this case (that was conducted in 1973). Izumi claimed that it updated this data to reflect POR costs. However, Izumi was unable to explain the methodology used to calculate the ''updated'' costs, nor was it able to provide any worksheets showing these calculations, or linking the reported costs to its POR internal books and records.

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for Izumi's submissions. Thus, the use of facts available is warranted in this case. Further, also as discussed above, 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.

In this context, however, although the respondent may not act to the best of its ability, it may be deemed sufficiently ''cooperative'' and the Department may determine to apply FA that are less adverse. *See* discussion above, for OCM.

As discussed above, we found significant problems with Izumi's submissions. Although we addressed deficiencies in Izumi's questionnaire responses regarding its reporting of comparison market sales and variable costs of manufacturing, Izumi still did not report all appropriate comparison market sales and cost information. Specifically, we were unable to determine the extent of unreported comparison market sales of merchandise identical or similar to merchandise sold in the United States because of various discrepancies between the information originally submitted and what we found at verification. Izumi was unable to explain these discrepancies, and at verification only provided information regarding a portion of the unreported third country sales. Izumi did not provide in its questionnaire responses either the calculation methodology employed to calculate its reported costs or appropriate cost variances. Moreover, at verification, Izumi was unable to explain how it had attempted to update the original investigation costs to reflect POR costs. Accordingly, because Izumi did not act to the best of its ability to comply with the request for information under section 776(b), an adverse inference is warranted. However, because Izumi made substantial efforts to cooperate throughout the course of this review, we are resorting to facts available that are less adverse to the interests of Izumi. *See, e.g., Fresh Cut Flowers-Colombia (1997).*

Therefore, we are assigning Izumi an adverse FA rate of 17.57 percent (a rate calculated for another respondent in a previous review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Izumi in future reviews of this proceeding. Since we are applying FA based on a margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act. *See* the section below on ''Corroboration of Information Used as Facts Available.'' For a detailed discussion of this issue *see* Memorandum From The Senior Director, AD/CVD Enforcement, Group II, Office IV to the Acting Deputy Assistant Secretary, Import Administration regarding Determination of Facts Available Based on Results of Verification of Izumi Chain Manufacturing Co., Ltd., (April 30, 1998), on file in room B–099, in the main Commerce Building.

The Department also notes that the majority of Izumi's home market sales were made to an affiliated Japanese manufacturer. Due to this affiliation, the Department will be reviewing, for the purposes of the final determination of this administrative review, the appropriateness of continuing our analysis of Izumi as a separate entity.

B. Partial Facts Available

DK and Enuma

In our initial questionnaire of June 18, 1997, we stated that if a respondent elected not to supply difference in merchandise (DIFMER) information and we later determined for any reason that a U.S. sale should be compared to a sale of a similar product in the comparison market, we might have to resort to the use of facts otherwise available (FA).

In response, both Daido and Enuma stated that they believed that they had identical home market (HM) sales for every U.S. model. However, both respondents admitted that a matching contemporaneous HM sale may not exist for every U.S. sale. Both Daido and Enuma contended that because of the large number of U.S. and HM sales, they had not been able to determine if there are any unmatched U.S. sales. Both respondents stated that they would ''report either difference in merchandise adjustments or constructed values,'' if they found that ''unmatched U.S. sales exist.''

In the supplemental questionnaires to Daido and Enuma dated September 2, 1997, and November 5, 1997, respectively, we again informed the respondents that if we determined that there was not a contemporaneous sale in the HM of an identical model for every model of roller chain sold in the United States, or such sales could not be used as a basis for normal value (NV) for any reason, and Daido and Enuma failed to report their DIFMER data, we might resort to FA in making our determinations. In its September 16, 1997, response, Daido stated that ''[n]o response was required'' while Enuma in its November 24, 1997, submission, provided no response except to state that ''[t]his particular question does not require an answer.'' Furthermore, in an additional supplemental questionnaire, dated December 11, 1997, we again asked Daido to confirm that it had reported a contemporaneous sale of an identical or similar HM model for every sale in the U.S. market, as requested in the original questionnaire. The supplemental questionnaire pointed out that if there is not an identical or similar HM match for each Daido sale in the U.S. market, then it was Daido's responsibility to submit CV information for those U.S. models which do not have contemporaneous comparison sales in the HM. Further, we reiterated to Daido the requirement to report VCOM data for both the home market and U.S. models and the TCOM for U.S. models, if there are sales of U.S. models for which there are no contemporaneous home market sales of identical merchandise. Daido responded that it ''believes that it has reported a contemporaneous home market sale of an identical model for every U.S. sale.'' However, in performing product comparisons for Daido and Enuma, we were unable to identify HM sales of identical products for every product sold in the United States, as claimed by the respondents.

Pursuant to 782(d), we provided Daido and Enuma the opportunity to explain their deficiencies. As noted above, Daido and Enuma failed to provide VCOM and/or CV information in response to our initial questionnaire. Each was sent a supplemental questionnaire requesting the VCOM and /or CV information. Neither Daido nor Enuma provided the requested data. Therefore, section 776(a) directs the Department to use facts otherwise available, subject to section 782(e).

Because the information at issue submitted by Daido and Enuma was so incomplete that it cannot serve as a

reliable basis for the unmatched U.S. sales, and by refusing to remedy the deficiencies in that information Daido and Enuma failed to act to best of their abilities, section 782(e) authorizes the Department to decline to consider the deficient information and resort to facts otherwise available.

The failure by Daido and Enuma to report DIFMER and/or CV data, information which we requested in our original and in our supplemental questionnaire(s) and information which they controlled, despite our warnings regarding the consequences of such an action, demonstrates that Daido and Enuma failed to cooperate to the best of their ability.

Given Daido and Enuma's lack of cooperation, we are assigning their unmatched sales an FA margin of 42.48 percent, the rate calculated for Kaga in the instant review.

Kaga

As a result of our analysis of the revised U.S. sales databases submitted by Kaga, on January 22, 1998, we identified a number of sales transactions listed in the U.S. sales databases which have missing values (*e.g.* VCOM, gross unit price (GRSUPRU), etc.). In letters dated March 25, 1998 and March 31, 1998, we requested that Kaga provide a revised U.S. sales tape containing the missing information we had identified. Further, we requested that Kaga check its databases to determine if any other transactions not identified in our request had missing values. If so, we asked that this information be provided as well.

On April 1, 1998, we received a call from counsel for Kaga who explained that in responding to our March 25, 1998, request for information regarding missing values, Kaga discovered other errors. We instructed Kaga to submit revised sales tapes for the United States and HM and informed Kaga that if we found errors or had difficulty in using the data on the revised tapes, we may proceed with our determination based on facts available.

On April 6, 1998, Kaga submitted revised sales data for constructed export price (CEP) sales and for export price (EP) sales to one customer but stated that it had been unable to locate any missing data for sales to the other EP customer. In addition, Kaga reported that it had made corrections with respect to packing, brokerage and handling, sale date, and freight from port to warehouse. However, in performing product comparisons for Kaga, we found several transactions with missing values in the U.S. sales databases, including VCOM, TCOM, number of strands, and GRSUPRU.

Pursuant to 782(d), we provided Kaga the opportunity to explain its deficiencies. We sent Kaga a supplemental questionnaire addressing deficiencies in its response. Although Kaga responded to our supplemental request for information, despite our warnings that we might proceed with our determination based on facts available if we found errors or had difficulty in using Kaga's revised data, the information provided was deficient. Therefore, Section 776(a) directs the Department to use facts otherwise available, subject to Section 782(e).

The application of Section 782(e) of the Act does not overcome Section 776(a)'s direction to use facts otherwise available for Kaga's U.S. sales database. Because several transactions in Kaga's U.S. sales databases have missing values for specific variables that are necessary for matching to HM sales, we are unable to calculate a margin for these U.S. sales.

Kaga's failure to provide data for specific variables which are essential to our determination of model match (*e.g.*, VCOM, TCOM, etc.), despite our pointing out to Kaga exactly what was missing, demonstrates that Kaga failed to cooperate to the best of its ability especially in light of Kaga's ability to provide the same type of information for other sales.

Given Kaga's lack of cooperation, we recommend assigning to Kaga's unmatched sales, an FA margin of 42.48 percent, which is the rate calculated for Kaga's other sales in the instant review and is one of the highest margins calculated in the history of this proceeding.

Sugiyama

As with the other respondents in this review, pursuant to section 782(d) of the Act, we provided Sugiyama the opportunity to explain deficiencies we noted in the responses. To that end, we issued supplemental questionnaires to Sugiyama on September 5, 1997, November 26, 1997, November 28, 1997, and December 17, 1997. We noted that in its original Section B response, Sugiyama reported that one of its affiliated home market resellers (hereafter referred to as reseller A) had sales to two customers in the home market during the POR. However, in its revised database, submitted in January 1998, in response to the Department's supplemental questionnaires, Sugiyama included previously unreported sales by reseller A to multiple additional customers. After careful review of this submission, we discovered that Sugiyama had increased its home market sales database by more than 40 percent. Sugiyama's failure to identify the magnitude of the increased sales resulted in the Department's rejecting this submission. However, we reconsidered this decision and in March accepted the submission, stating that we were not certain how we would treat the newly reported sales. Subsequently, after the deadline had passed for submission of new factual information, Sugiyama advised the Department that several of those additional customers were affiliated with reseller A.

Given the lateness of these submissions, the extent of the additional information provided, and concerns about establishing the accuracy of the data, we are excluding this data from our preliminary margin calculations. Further, we have identified all U.S. transactions where the normal value that would have been used for comparison purposes relied in whole or in part on those newly reported home market sales and applied a margin based on the FA to the U.S. sales in question.

The preceding analysis demonstrates that Sugiyama failed to cooperate to the best of its ability. Thus, in accordance with section 776(b), in selecting among the FA for this respondent, we believe that an adverse inference is warranted. Given Sugiyama's lack of cooperation, we assigned as FA to the U.S. sales in question, the 42.48 percent rate calculated for Kaga in the instant review.

Between the preliminary and final review results, we will address the appropriateness of including the additional transactional data in our final margin analysis.

3. *Corroboration of Information used as Facts Available*

Section 776(b) of the Act authorizes the Department to use as adverse FA 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 facts available. Secondary information is described in the SAA (at 870) as ''[i]nformation 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.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has

probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act. *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *AFBs-1997*.

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (Sept. 9, 1997) that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse [FA], the Department will disregard the margin and determine an appropriate margin.'' *See* also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567. We have determined that there is no evidence on the record of the 1987–1988 administrative review, where we calculated the 17.57 percent rate for Hitachi Metals, that would indicate that the 17.57 percent rate is irrelevant or inappropriate as an adverse FA rate for certain respondents in the instant review. Therefore, where we have applied as FA, the 17.57 margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review, which were produced and sold by the respondent in the home market during the POR, to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the CV of the product sold in the U.S. market during the comparison period.

In past segments of this proceeding, we have used the model match databases submitted by the respondents to identify identical and similar merchandise in the home market. For this review, however, we have determined it appropriate to make the analysis in this proceeding consistent with the Department's practice of defining identical and similar merchandise based on the product characteristics outlined in the antidumping questionnaire.

In the final results of the prior segment of this proceeding, we stated our intent to use the model match comments received in that review as a starting point for determining the appropriate model match criteria to be employed in future reviews. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR at 60475* (November 10, 1997). Using these comments, we developed proposed model match criteria and issued the proposal to all parties in a letter dated November 26, 1997. Additional comments were received from all parties on December 12, 1997 and December 15, 1997. Based on our analysis of all comments received as well as our examination of questionnaire responses, product catalogs of various respondents in the current review, and the model matching methodology used by the Department in prior segments of this proceeding, we developed our model match criteria based on eighteen product characteristics as outlined in our supplemental questionnaire of December 19, 1997.

Fair Value Comparisons

To determine whether sales of the subject merchandise by the respondents to the United States were made at below NV, we compared the EP or CEP to the NV, as described in the ''export price,'' ''constructed export price,'' and ''normal value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the EPs and CEPs of individual transactions to the monthly weighted-average NV of contemporaneous sales of the foreign like product.

Export Price

For the price to the United States, we used EP, as defined in section 772(a) of the Act, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, and marine insurance because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in section 772(b) (c) and (d) of the Act, where sales to the first unaffiliated purchaser in the United States took place after importation or where CEP methodology was otherwise warranted.

In the case of RK, the company reported its sales through NIC and its direct sales to ATSI as EP sales where the price and quantity sold to unaffiliated parties were established prior to exportation and the merchandise did not enter ATSI's inventory. When sales are made prior to the date of importation through an affiliated or unaffiliated sales entity in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link (*i.e.*, ''a paper-pusher'') with the unaffiliated U.S. buyer. Where the factors indicate that the activities of the selling entity in the United States are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain* , 63 FR 10849,10852 (March 5, 1998).

Based on our review of the record information concerning RK's sales described above, we preliminarily determine that these sales are CEP

transactions. We note that according to RK the customary channel is to sell the merchandise prior to importation and ship the merchandise directly from RK or RK/NIC to the unaffiliated buyer in the United States without being introduced into the physical inventory of ATSI. However, during the POR, FTM & Associates (FTM), an unaffiliated U.S. sales company, acted as a selling agent for RK and RK/NIC with respect to all RK-produced merchandise sold in the United States that did not enter into ATSI's inventory. FTM was responsible for introducing potential new customers and sales to RK and its affiliates, U.S. advertising, and all customer contact. Thus, FTM acted as more than just a paper processor or communication link for sales of RK-produced merchandise. Accordingly, for purposes of these preliminary results, we are treating the sales in question as CEP sales. For a more detailed discussion of this issue, *see* the April 30, 1998, Memorandum to the Acting Deputy Assistant Secretary, Import Administration, regarding Treatment of Certain RK Excel U.S. Sales of Subject Merchandise as Constructed Export Price or Export Price Transactions, on file in room B–099, of the main Commerce Building.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. Where appropriate, the Department made adjustments for discounts and rebates. Also where appropriate, we deducted credit expenses, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions, where appropriate, for movement expenses (foreign inland freight, foreign brokerage and handling, international freight and insurance, U.S. duties, U.S. brokerage and handling, and U.S. inland-freight and insurance), and pursuant to section 772(d)(3), where applicable, we made an adjustment for CEP profit. With regard to RK and Sugiyama, the only respondents in this review who further-manufactured the merchandise in the United States, we made a deduction for the cost of further manufacturing in the United States in accordance with section 772(d)(2) of the Act.

Normal Value

Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. For DK, Enuma, RK, Sugiyama, and Kaga, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because each of these respondents made home market sales which were greater than five percent of its sales in the U.S. market.

Arms-Length Transactions for Enuma and Sugiyama

Sales to affiliated customers in the home market for Enuma and Sugiyama which were determined not to be at arms-length were excluded from our analysis. To test whether these sales were made at arms-length, we compared the starting prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Pursuant to 19 CFR 353.45(a) and in accordance with our practice, where the price to the affiliated party was less than 99.5 percent or more of the price to the unaffiliated party, we determined that the sales made to the affiliated party were not at arm's length. We disregarded all sales of Sugiyama's and Enuma's home market customers that did not pass the arms-length test.

Level of Trade

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Customer categories such as distributor, original equipment manufacturer, or reseller are commonly used by respondents to describe levels of trade but are insufficient to establish an LOT. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the the levels of trade. Different levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different selling functions in selling to them.

If we find that the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value:* Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In order to determine whether a LOT adjustment or CEP offset was warranted for Kaga, RK, Enuma, DK and Sugiyama, we compared the EP and CEP sales to the HM sales in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and the Japanese markets, including the selling functions, classes of customer, and selling expenses for each of the above companies.

Based on our analysis of these factors, we found for each respondent that no LOT difference existed between its U.S. and home market. Therefore, we have made no LOT adjustment for any of these respondents. For a detailed discussion of the LOT issues, *see* the April 30, 1998, memoranda to the Program Manager from the Team, regarding the LOT analysis for Kaga, RK, Enuma, Daido and Sugiyama.)

Constructed Value

For Sugiyama's, RK's, and Kaga's products for which we could not determine the NV based on home market sales of roller chain, because there were no contemporaneous sales of a comparable product, we compared U.S. prices to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of manufacturing (COM) of the product sold in the United States, plus amounts for home market SG&A

expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A), we used the actual amounts incurred and realized by the respective manufacturers in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and profit.

Price-to-Price Comparisons

We based NV on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market prices for discounts, rebates, inland freight, insurance, technical services, and other direct selling expenses. To adjust for differences in circumstances of sales (COS) between the home market and the EP and CEP transactions in the United States, we reduced home market prices by an amount for home market credit expenses. For comparison to EP transactions we also made an upward adjustment for U.S. credit expenses. We also made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to 19 CFR 353.56(b). To adjust for differences in packing between the two markets, we adjusted the home market price by deducting HM packing costs and adding U.S. packing costs. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences. For comparisons to EP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales. We also made adjustments, where applicable, for the commission offset in the manner described above.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates published by the Federal Reserve in effect on the dates of the U.S. sales. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. (For a detailed explanation, *see* Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996.) The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate. We have determined that no fluctuation existed in this review, therefore, we have made currency conversions based on the daily exchange rates.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period April 1, 1996, through March 31, 1997:

Manufacturer/exporter	Weighted-average margin percentage
Daido Kogyo Company Ltd	0.03
Enuma Chain Mfg. Company	0.06
Izumi Chain Mfg. Company Ltd	17.57
Pulton Chain Company Inc	42.48
R.K. Excel Company Ltd	10.29
Kaga Kogyo/Kaga Industries	42.48
Oriental Chain Company	17.57
Sugiyama Chain Company, Ltd	31.50

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, (2) a brief summary of the argument not to exceed five pages, and (3) a table of authorities cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 180 days after the date of publication of this notice. The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For duty assessment purposes, for CEP sales we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For assessment of EP sales we calculated a per unit importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of roller chain from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for exporters not covered in this review, but covered in the LTFV investigation or prior reviews, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the prior review; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 15.92 percent, the ''All Others'' rate based on the first review conducted by the Department in which a new shipper rate was established in the final results of

antidumping finding administrative review (48 FR 51801, November 14, 1983). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: April 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12206 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include briefings on trade priorities and issues, the Asia monetary crisis, the World Trade Organization, economic sanctions and Virtual Trade Mission activities. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 12991.

DATE: June 2, 1998.

TIME: 10:30 p.m. to 4:15 p.m.

ADDRESSES: The J.W. Mariott Hotel, Salon G, 1331 Pennsylvania Avenue, N.W., Washington, D.C., 20004. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted by May 15, 1997, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, D.C., 20230. (Phone: 202–482–1124) Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, D.C., 20230 (Phone: 202–482–1124).

Dated: May 1, 1998.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 98–12281 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042998D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of its Special Crustacean and Finfish Stock Assessment Panels (SAP).

DATES: A meeting of the Crustacean SAP will be held beginning at 1:00 p.m. on Monday, June 1, 1998, and will conclude by 12:00 noon on Thursday, June 4, 1998. A meeting of the Finfish SAP will be held beginning at 1:00 p.m. on Monday, June 22, 1998, and will conclude by 12:00 noon on Thursday, June 25, 1998.

ADDRESSES: The Crustacean SAP meeting will be held at the Crowne Plaza Hotel, 333 Poydras Street, New Orleans, LA. The Finfish SAP meeting will be held at the Atlantic Oceanographic Meteorologic Center, 4301 Rickebacker Causeway, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Panels will be convened to develop alternatives for the overfishing criteria as required by the Sustainable Fisheries Act. Separate criteria will be considered for each of the stocks or stock-complexes managed under the Council's existing Fishery Management Plans (FMP) for shrimp, stone crab, and spiny lobster (Crustacean SAP), and for migratory coastal pelagics, reef fish, and red drum (Finfish SAP).

The Panels will develop proxies for expressing maximum sustainable yield and optimum yield in terms of spawning potential ratio, spawning stock biomass per recruit, or other credible analyses as appropriate for the stocks or stock complexes of each FMP. The Panels will also develop alternatives for rebuilding periods for stocks that have been classified as overfished by NMFS. The Panels may suggest modifications to the framework procedures for specifying acceptable biological catch and total allowable catch where appropriate. Each panel will develop a report to the Council setting forth their recommendations.

Although other issues not contained in this agenda may come before the Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

These meeting are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 22, 1998.

Dated: May 1, 1998.

Richard W. Surdi,

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

[FR Doc. 98–12254 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042998A]

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 Pacific Fishery Management Council's (Council) Allocation Committee will hold a meeting which is open to the public.

DATES: The meeting will begin on Friday, May 22, 1998, at 8 a.m. and will continue throughout the day as necessary.

ADDRESSES: The meeting will be held at the Council Office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the potential allocation of lingcod and some rockfish species among the recreational and commercial fisheries and between gear sectors of the limited entry fleet. The committee will discuss, among other things, objectives of the allocations, the process requirements, available data, the basis for allocations, and implementation concerns. The committee will prepare a report to present to the Council at its June meeting.

Although other issues not contained in this agenda may come before this Committee for discussion, according to the Magnuson- Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Larry Six at (503) 326- 6352 at least 5 days prior to the meeting date.

Dated: May 1, 1998.

Richard W. Surdi,

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

[FR Doc. 98–12250 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042998B]

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 Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) Economic Subcommittee will hold a meeting which is open to the public.

DATES: The meeting will begin on Wednesday, May 27, 1998, at 10:00 a.m., and will continue through 4:00 p.m. on Thursday, May 28, 1998. The Wednesday session may go into the evening until business for the day is completed. The Thursday session will begin at 8:00 a.m. An opportunity for public comment will be provided at 4:00 p.m. on Wednesday and 3:00 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review a draft economic data collection plan prior to submission of the plan to the Council for adoption for public review, to review draft economic research and data needs, and, if time permits, to conduct an initial review of available materials on draft salmon, groundfish, and coastal pelagic plan amendments.

Although other issues not contained in this agenda may come before the economic subcommittee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Larry Six at (503) 326- 6352 at least 5 days prior to the meeting date.

Dated: May 1, 1998.

Richard W. Surdi,

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

[FR Doc. 98–12251 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042998C]

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 Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a meeting which is open to the public.

DATES: The meeting will begin on Monday, June 1, 1998, at 1 p.m. and will continue through 4 p.m. on Thursday, June 4, 1998. The Tuesday and Wednesday sessions will begin at 8 a.m. and may go into the evening until business for the day is completed. An opportunity for public comment will be provided at 4 p.m. each day of the meeting and 3 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to finish preparation of the draft fishery management plan amendment and to prepare technical advice and reports to support Council decisions throughout the year. Specific issues the GMT will address include: (1) prepare and review sections of the draft groundfish fishery management plan amendment; (2) review inseason catch projections; (3) prepare recommendations related to groundfish research and data needs; (4) evaluate data and analysis requirements related to lingcod and rockfish allocation; (5) evaluate Pacific grenadier and rockfish landings trends; (6) develop recommendations for stock assessment priorities for 1999; (7) review analysis of voluntary observer program data; (8) review buy back program; (9) review ''fish for research'' emergency rule and permit conditions; and (10) development of discard estimates for lingcod.

Although other issues not contained in this agenda may come before this Team for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal discussion during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Larry Six at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 1, 1998.

Richard W. Surdi,

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

[FR Doc. 98–12252 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT

Hearings

AGENCY: Commission on the Advancement of Federal Law Enforcement.

ACTION: Notice of Public Hearings.

TIMES AND DATES: Monday, May 18, 1998; 9:00 A.M.–2:00 P.M.; Monday, June 22, 1998; 9:00 A.M.–4:00 P.M.; Tuesday, June 23, 9:00 A.M.–12:00 Noon; Thursday, July 9, 1998; 9:00 A.M.–4:00 P.M.; Friday, July 10, 1998; 9:00 A.M.–12:00 Noon; Monday, August 24, 1998; 9:00 A.M.–4:00 P.M.; Tuesday, August 25, 1998; 9:00 A.M.–12:00 Noon; Monday, September 14, 1998; 9:00 A.M.–4:00 P.M.; Tuesday, September 15, 1998; 9:00 A.M.–4:00 P.M.; Hearing dates for October, November and December, 1998 have yet to be determined.

SUMMARY: The Commission on the Advancement of Federal Law Enforcement was created by the Congress in Section 806 of Public Law 104–132, more commonly known as the Anti-Terrorism and Effective Death Penalty Act of 1996. Congress' charge to the Commission is extremely broad and directs the Commission to ''review, ascertain, evaluate, report and recommend'' action to the Congress on a broad array of issues affecting federal law enforcement priorities for the 21st century. The Commission's report will include recommendations for administrative and legislative action that the Commission considers advisable on the issues it is evaluating. The Commission announces its hearing schedule, thereby notifying the general public of their opportunity to attend the hearings and to offer testimony. These public hearings are designed to give the Commission the considered views of those testifying to assist the Commission in the preparation of its report and to give interested parties the opportunity to present to the Commission information that these parties believe will assist the Commission in its task. The Commission will include in its study of the various federal law enforcement entities their respective functions, programs, responsibilities, and jurisdictions, along with questions involving their training, coordination, and their interaction with each other, as well as with state and local law enforcement bodies.

Date and Time: Monday, May 18, 1998; 9:00 A.M. to 4:00 P.M.

Location: The American Chemical Society (Othmer Hall) 1155 M Street, N.W., Washington, D.C. 20036.

Date and Time: Monday, June 22, 1998; 9:00 A.M. to 4:00 P.M., Tuesday, June 23, 1998; 9:00 A.M. to 12:00 Noon.

Location: Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C. 20037.

Date and Time: Thursday, July 9, 1998; 9:00 A.M. to 4:00 P.M., Friday, July 10, 1998; 9:00 A.M. to 12:00 Noon.

Location: The American Chemical Society (Othmer Hall), 1155 M Street, N.W., Washington, D.C. 20036.

Date and Time: Monday, August 24, 1998; 9:00 A.M. to 4:00 P.M., Tuesday, August 25, 1998; 9:00 A.M. to 12:00 Noon.

Location: The American Chemical Society (Othmer Hall), 1155 M Street, N.W., Washington, D.C. 20036.

Date and Time: Monday, September 14, 1998; 9:00 A.M. to 4:00 P.M., Tuesday, September 15, 1998; 9:00 A.M. to 4:00 P.M.

Location: The Latham Hotel (Georgetown) 3000 M Street, N.W., Washington, D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, Commission on the Advancement of Federal Law Enforcement, 1615 M Street, N.W., Suite 240, Washington, D.C. 20036. Telephone (202) 634–6501. Facsimile: (202) 634–6038.

SUPPLEMENTARY INFORMATION: The Commission on the Advancement of Federal Law Enforcement was established by Public Law 104–132, dated April 24, 1996.

Carmelita Pratt,

Administrative Officer.

[FR Doc. 98–12273 Filed 5–7–98; 8:45 am]

BILLING CODE 6820–DK–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67622, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 4, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on May 8, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	1,007,499 dozen.
339/639	988,740 dozen.
342/642	550,836 dozen.

Category	Adjusted twelve-month limit [1]
347/348/647/648	2,244,019 dozen of which not more than 1,148,820 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–12270 Filed 5–7–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0341]

Information Collection Requirements; Acquisition of Information Technology

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through September 30, 1998. DoD proposes that OMB extend its approval for use through September 30, 2001.

DATES: Consideration will be given to all comments received by July 7, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite OMB Control Number 0704–0341 in all correspondence related to this issue. Comments may also be provided electronically by e-mailing the comments to dfars@acq.osd.mil. Please include OMB Control Number 0704–0341 in the subject line of the e-mail.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/ paper copies may be obtained from Mr. Michael Pelkey, PDUSD(A&T)(DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology, and the associated clauses at DFARS 252.239–7000 and 252.239–7006; no form is used for this information collection; OMB Number 0704–0341.

Needs and Uses: This requirement provides for the collection of necessary information from contractors regarding security requirements applicable to computers used for processing of classified information; tariffs pertaining to telecommunications services; and proposals from common carriers to perform special construction under contracts for telecommunications services. The information is used by contracting officers and other DoD personnel to ensure that computer systems are adequate to protect against unauthorized release of classified information; to participate in the establishment of tariffs for telecommunications services; and to establish reasonable prices for special construction by common carriers.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 2,110.

Number of Responses: 1,871.

Responses Per Respondent: 1.02.

Average Burden Per Response: 1.13 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.239–7000, Protection Against Compromising Emanations, requires that the contractor provide, upon request of the contracting officer, documentation supporting the accreditation of the computer system to meet the appropriate security requirements.

The clause at DFARS 252.239–7006, Tariff Information, requires that the contractor provide, upon request of the contracting officer, a copy of the contractor's existing tariffs; before filing, a copy of any application to a Federal, State, or other regulatory agency for new rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, and, upon request, a copy of all information, material, and data developed or prepared in support of or in connection with such an application; and a notification to the contracting officer of any application submitted by anyone other than the contractor that may affect the rate or conditions of services under the agreement or contract.

DFARS 239.7408 requires that a detailed special construction proposal be obtained from a common carrier that submits a proposal or quotation that has special construction requirements related to the performance of basic telecommunications services.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–12267 Filed 5–7–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act, a meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 15, 1998, at the IEA's headquarters in Paris, France to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: Subject to timely enactment of legislation to

reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act (EPCA), the following meeting notice is provided, in accordance with section 252(c)(1)(A)(I) of the EPCA:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 15, 1998, at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, beginning at approximately 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the IEA's headquarters on May 15, including a preparatory encounter among company representatives from approximately 9:15 a.m. to 9:30 a.m. The agenda for the preparatory encounter among company representatives is to elicit views regarding items on the agenda for the SEQ meeting. The SEQ's agenda is under the control of the SEQ. It is expected the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 91st Meeting
3. SEQ Work Program
   —The 1998 SEQ Work Program
   —The 1999 SEQ Work Program
   —Preparations for Emergency Response Exercise 1998
4. Policy and Legislative Developments in Member Countries
   —U.S. Energy Policy and Conservation Act (EPCA)
   —Report on U.S. Department of Energy's National Energy Strategy
   —Other Country Developments
5. Emergency Response Reviews of IEA Countries
   —Netherlands
   —Switzerland
   —Italy
   —Updated Schedule of Reviews
6. Transport Sector Oil Security Issues and Prospects
   —Road Vehicles for the Future
7. Emergency Reserve Situation of IEA Countries
   —Emergency Reserve and Net Import Situation of IEA Countries on October 1, 1997
   —Emergency Reserve and Net Import Situation of IEA Countries on January 1, 1998
   —Progress Report on Compliance with IEA Stockholding Commitments
8. Emergency Response Issues in IEA candidate countries
   —Emergency Reserve Situation of IEA Candidate Countries
   —Report on Data Reporting by Candidate Countries
9. Emergency Data System and Related Questions
   —Base Period Final Consumption Q197–Q497
   —Monthly Oil Statistics (MOS) December 1997
   —MOS January 1998
   —MOS February 1998
   —Monthly Oil Data Diskette Service (MODS)
   —Quarterly Oil Forecast Q398
   —Emergency Management Manual (improved format)
   —Emergency Reference Guide
10. IEA/ASCOPE Workshop on Asian Energy Security
11. Implementation of IEA Security Rules
12. Any Other Business
   —Oral Report on the May 14 Seminar on the Effects of the Oil Price Drop
   —Update on use of Internet for SEQ documents and communications
   —Workshop in Brazil on Enhancing Oil Sector Energy Security

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., May 1, 1998.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 98–12295 Filed 5–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2927–004 and 2928–004]

Aquamac Corporation and Merrimac Paper Company Inc.; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

May 4, 1998.

The Federal Energy Regulatory Commission (Commission or FERC), received an application from the Aquamac Corporation (Aquamac) to relicense the Aquamac Hydroelectric Project No. 2927–004. This 250 kilowatt project is located on the Merrimack River in the City of Lawrence in Essex County, Massachusetts. The Commission also received an application from the Merrimac Paper Company, Inc. (Merrimac), to relicense the Merrimac Hydroelectric Project No. 2928–004. This 1,250 kilowatt project is also located on the Merrimack River in the City of Lawrence in Essex County, Massachusetts. The Commission will hold public and agency scoping meetings on May 18 and 19, 1998, respectively, for preparation of a Multiple Project Environmental Assessment (MPEA) under the National Environmental Policy Act (NEPA), for the issuance of minor licenses for the projects.

Scoping Meetings

FERC staff will conduct one evening scoping meeting and one day scoping meeting. The day scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that will be analyzed in the MPEA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Monday, May 18, 1998.
Time: From 7:00 p.m. until 10:00 p.m.
Place: Merrimac Paper Company Conference Room.
Address: 9 South Canal Street, Lawrence, Massachusetts.

Day Scoping Meeting

Date: Tuesday, May 19, 1998.
Time: From 10:00 a.m. until 1:00 p.m.
Place: Merrimac Paper Company Conference Room.
Address: 9 South Canal Street, Lawrence, Massachusetts.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visits

The Applicant and FERC staff will conduct a project site visit beginning at 1:00 p.m. on May 18, 1998. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Merrimac Paper Company office at 9 South Canal Street in Lawrence. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Mr. Ed Roux of Merrimac Paper at (978) 683–2754.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage

statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the MPEA; and (5) identify resource issues that are of lesser importance, and therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceedings on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the meetings may be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the MPEA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, until June 22, 1998. All filings should contain an original and eight copies, and must clearly show at the top of the first page ''Aquamac Hydroelectric Project FERC No. 2927—004.''; ''Merrimac Hydroelectric Project FERC No. 2928—004''; or both.

For further information, please contact Tim Berry at (202) 219–2790 or Timothy.Berry@FERC.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12257 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF94–160–004]

Cherokee County Cogeneration Partners, L.P.; Notice of Amendment To Filing

May 4, 1998.

Take notice that on April 17, 1998, Cherokee County Cogeneration Partners, L.P. (applicant), tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement pertains to the ownership structure of the facility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All motion and protest should be filed by May 18, 1998, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12256 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2623–000]

Cook Inlet Energy Supply Limited Partnership; Notice of Filing

May 4, 1998.

Take notice that on April 21, 1998, Cook Inlet Energy Supply Limited Partnership (Cook Inlet), in compliance with the Commission's July 10, 1996, Letter Order approving its market-based rate schedule, submitted for filing a Notification of Change in Status. The Cook Inlet filing describes the development of wind energy projects by affiliates of Cook Inlet and concludes that these transactions do not alter the characteristics that the Commission relied upon in approving the market-based pricing for Cook Inlet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12222 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–70–000]

Duke Energy Morro Bay LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 4, 1998.

Take notice that on April 24, 1998, Duke Energy Morro Bay LLC (Morro Bay), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Morro Bay is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Duke Energy Corporation. Morro Bay's facility consists of four natural gas-fired generating units with a combined generating capacity of 1,002 MW. Morro Bay states that prior to its purchase of the facility from Pacific Gas & Electric (PG&E), the facility was part of PG&E's integrated system. Therefore, a rate or charge in connection with this facility was in effect under the laws of California on October 24, 1992. On December 16, 1997, the Public Utilities Commission of the State of California (CPUC), issued an interim opinion which concluded that allowing the facility to be an exempt wholesale generator within the meaning of PUHCA would be in the public interest,

would benefit consumers, and would not violate California law. Morro Bay attached a copy of the CPUC opinion to its application.

Morro Bay further states that copies of the application were served upon the California Power Exchange, the Securities and Exchange Commission, the South Carolina Public Service Commission, the North Carolina Utilities Commission, and the CPUC.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 15, 1998 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–12220 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2626–000]

Kansas City Power & Light Company; Notice of Filing

May 4, 1998.

Take notice that on April 20, 1998, Kansas City Power & Light Company (KCPL), tendered for filing its report of transactions under KCPL's GSS Tariff for the first quarter of 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12223 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2665–000]

PJM Interconnection, L.L.C., Notice of Filing

May 4, 1998.

Take notice that on April 23, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Cargill-Alliant LLC. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12224 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–384–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

May 4, 1998.

Take notice that on April 24, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–384–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point for service to Walthall Natural Gas Company, Inc. (Walthall), under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide firm transportation service to Walthall at a new delivery point for service at approximately Mile Post 22.5 on Southern's 24″ Franklinton-Gwinville and 26″ Franklinton-Gwinville Loop Line in Section 16, Township 2 North, Range 11 East, Walthall County, Mississippi. The estimated cost of the facilities proposed to be constructed by Southern is $185,725.

Southern states that it will transport gas on behalf of Walthall under a new service agreement with Southern pursuant to Southern's Rate Schedule FT. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its existing firm requirements. Southern and Walthall have executed a firm transportation agreement and Southern has agreed to pay for the cost of the facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–12225 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–9–000]

Warren Transportation, Inc.; Notice of Filing

May 4, 1998.

Take notice that on April 23, 1988, Warren Transportation, Inc. (Warren), filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12226 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FREC ¶ 61,004 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2609–000]

Wisconsin Public Service Corporation; Notice of Filing

May 4, 1998.

Take notice that on April 20, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing a quarterly report of short term transactions made during the first quarter of 1998 under WPSC's FERC Electric Tariff, Original Volume No. 10 (MR Tariff).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 204426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before May 15, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–12221 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1033–000, et al.]

Automated Power Exchange, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 30, 1998.

Take notice that the following filings have been made with the Commission:

1. Automated Power Exchange, Inc.

[Docket No. ER98–1033–000]

Take notice that on April 27, 1998, Automated Power Exchange, Inc., filed its compliance filing in the above-captioned proceeding.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER98–1174–000]

Take notice that on April 27, 1998, West Texas Utilities Company (WTU), resubmitted for filing in this docket, without seeking confidential treatment, a ''Control Area Services Agreement Among West Texas Utilities Company and Rayburn Country Electric Cooperative, Inc., and LG&E Power Marketing'' (the Agreement) pursuant to which WTU will sell a package of control area services to Rayburn Country Electric Cooperative, Inc., (Rayburn) and LG&E Energy Marketing Inc., (formerly known as LG&E Power Marketing Inc.) (LPM).

WTU continues to seek an effective date of May 22, 1998. WTU has served copies of the resubmitted filing on Rayburn, LPM and the Public Utility Commission of Texas.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98–1580–000]

Take notice that on April 27, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing its amended Service Agreement, dated January 1, 1998, in which Cinergy signed up as a customer under its own Open Access Transmission Tariff. As directed by the Commission's July 31, 1997, Order issued in Allegheny Power System, et al., 80 FERC ¶ 61,143 (1997), Cinergy also changed the rates in said Service Agreement back to its pre-Order No. 888 open access transmission tariff rates.

Copies of the filing have been served upon the Customer, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Rochester Gas and Electric Corporation

[Docket No. ER98–1605–001]

Take notice that on April 27, 1998, Rochester Gas and Electric Corporation made a filing in compliance with the Commission's March 26, 1998, Order in the above-referenced proceeding. Rochester Gas and Electric Corporation, 82 FERC ¶ 61,294.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER98–1874–000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing its amended Service Agreement, dated February 1, 1998, in which Cinergy signed up as a customer under its own Open Access Transmission Tariff. As directed by the Commission's July 31, 1997, Order issued in Allegheny Power System, et al., 80 FERC ¶ 61,143 (1997), Cinergy also changed the rates in said Service Agreement back to its pre-Order No. 888 open access transmission tariff rates.

Copies of the filing have been served upon the Customer, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. FirstEnergy System

[Docket No. ER98–2689–000]

Take notice that on April 27, 1998, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Aquila Power Corporation, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is April 1, 1998, for the above mentioned Service Agreement in this filing.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER98–2690–000]

Take notice that on April 27, 1998, Tampa Electric Company (Tampa Electric), filed a notice of termination of the agreement for interchange service between Tampa Electric and the City of Vero Beach (Vero Beach). Tampa Electric requests that the termination be made effective on May 1, 1998.

Copies of the filing have been served on Vero Beach and the Florida Public Service Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER98–2691–000]

Take notice that on April 27, 1998, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for DTE Energy Trading, Incorporated and SCANA Energy Marketing, Incorporated, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under the Service Agreements is April 1, 1998.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Dayton Power and Light Co.

[Docket No. ER98–2692–000]

Take notice that on April 27, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing The Dayton Power and Light Energy Services Department as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon The Dayton Power and Light Company and the Public Utilities Commission of Ohio.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Company

[Docket No. ER98–2693–000]

Take notice that on April 27, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing East Kentucky Power Cooperative, Inc., Merchant Energy Group of the Americas, Inc., VTEC Energy, Inc., Virginia Electric and Power Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon East Kentucky Power Cooperative, Inc., Merchant Energy Group of the Americas, Inc., VTEC Energy, Inc., Virginia Electric and Power Company and the Public Utilities Commission of Ohio.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER98–2694–000]

Take notice that on April 27, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with OGE Energy Resources, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon OGE Energy Resources, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric

[Docket No. ER98–2695–000]

Take notice that on April 27, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Snohomish County PUD.

PGE respectfully requests that the Commission allow the Service Agreement to become effective March 20, 1998. PGE will be required to refund the time value of any revenues collected from the effective date of the Service Agreement through June 26, 1998, to account for the prior-notice requirement under 18 CFR Section 35.3.

A copy of this filing was caused to be served upon Snohomish County PUD as noted in the filing letter.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER98–2696–000]

Take notice that on April 27, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with OGE Energy Resources, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and

conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon OGE Energy Resources, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER98–2697–000]

Take notice that on April 27, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Otter Tail Power Company (Otter Tail) dated April 2, 1998, and a Non-Firm Transmission Service Agreement with Otter Tail dated April 2, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 2, 1998, for the Agreements with Otter Tail and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Otter Tail, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric

[Docket No. ER98–2699–000]

Take notice that on April 27, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing a true-up to rates pursuant to Contract No. 14–06–200–2948A, PG&E Rate Schedule FERC No. 79 (Contract 2948A), between PG&E and the Western Area Power Administration (Western).

Pursuant to Contract 2948A and the PG&E-Western Letter Agreement dated February 7, 1992, electric capacity and energy sales are made initially at rates based on estimated costs and are then trued-up at rates based on recorded costs after the necessary data become available. The proposed rate change establishes recorded cost-based rates for true-up of capacity sales and energy sales from Energy Account No. 2, made during 1996, at rates based on estimated costs.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER98–2700–000]

Take notice that on April 27, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Network Integration Transmission Service Agreement and a Network Operating Agreement, both dated April 2, 1998, and entered into by MidAmerican and the City of Denver, Iowa (Denver) in accordance with MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 2, 1998, for the Agreements and, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Denver, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER98–2701–000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Tractebel Energy Marketing, Inc., in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on Tractebel Energy Marketing, Inc.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER98–2702–000]

Take notice that on April 27, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and South Jersey Energy Company in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on South Jersey Energy Company.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER98–2703–000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Engage Energy US, L.P., in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on Engage Energy US, L.P.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER98–2704–000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Amoco Trading Corporation in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on Amoco Trading Corporation.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER98–2705–000]

Take notice that on April 27, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Tenaska Power Services Company in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served upon Tenaska Power Services Company.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER98–2706–000]

Take notice that on April 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and FirstEnergy Corp., as agent for and on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company (FirstEnergy Corp.). This Transmission Service Agreement specifies that FirstEnergy Corp., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and FirstEnergy Corp., to enter into separately scheduled transactions

under which NMPC will provide transmission service for FirstEnergy Corp., as the parties may mutually agree.

NMPC requests an effective date of April 20, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and FirstEnergy Corp.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER98–2707–000]

Take notice that on April 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New York Power Authority. This Transmission Service Agreement specifies that New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of April 21, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New York Power Authority.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER98–2708–000]

Take notice that on April 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and FirstEnergy Corp. (FirstEnergy Corp.), as agent for and on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company. This Transmission Service Agreement specifies that FirstEnergy Corp., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and FirstEnergy Corp., to enter into separately scheduled transactions under which NMPC will provide transmission service for FirstEnergy Corp., as the parties may mutually agree.

NMPC requests an effective date of April 20, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and FirstEnergy Corp.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas And Electric Company

[Docket No. ER98–2709–000]

Take notice that on April 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and VTEC Energy, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12227 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2712–000, et al.]

Kentucky Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

May 1, 1998.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. ER98–2712–000]

Take notice that on April 28, 1998, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during January 1, 1998 through March 31, 1998, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket No. ER98–2713–000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc. and the City of Salem, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Salem, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98–2714–000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc. and the City of Martinsville, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Martinsville, Virginia, the

Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–2715–000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc., and the city of Bedford, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Bedford, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas And Electric Company

[Docket No. ER98–2716–000]

Take notice that on April 28, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the Transaction detail for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER98–2717–000]

Take notice that Rayburn Country Electric Cooperative, Inc. (Rayburn Electric), on April 28, 1998, tendered a rate change filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the regulations of the Federal Energy Regulatory Commission (FERC, or Commission). Rayburn Electric proposes to implement changes to its tariff which are revenue-neutral to its system wide rates approved by the Commission in 1995, and by the Public Utility Commission of Texas (PUCT) in 1994. Rayburn Electric indicates that its FERC-jurisdictional rate resulting from the proposed rate change will not increase. Rayburn states that all wholesale customers that belong to the affected rate class consent to the proposed rate change. Rayburn Electric requests an effective date of June 1, 1998, or such other date as may be approved by the PUCT regarding Rayburn Electric's companion rate filing submitted to the PUCT, and requests any waivers or other authority deemed necessary by the FERC to permit its rate change to become effective as proposed.

Rayburn Electric proposes changes to its rates currently charged to its member cooperatives, as presently reflected in Rayburn Electric's Rate Schedule WP–2 on file with the FERC. The changes are proposed primarily due to new power supply arrangements that Rayburn Electric has entered into on behalf of its member cooperatives, which will result in substantial savings in purchased power costs. Although Rayburn Electric indicates that the new power supply arrangements affect only the portion of Rayburn Electric's load in the Electric Reliability Council of Texas, the savings under the new arrangements, according to Rayburn Electric, will benefit all of Rayburn Electric's load through the blended, system wide rates.

Rayburn Electric has served copies of this filing on each of the parties to the Agreement, its member/customers and the PUCT.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER98–2718–000]

Take notice that on April 28, 1998, Consumers Energy Company (Consumers), tendered for filing an executed Service Agreement for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and a Network Operating Agreement. Both were with the City of Wyoming and have effective dates of April 22, 1998.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the customer.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Great Bay Power Corporation

[Docket No. ER98–2719–000]

Take notice that on April 28, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Strategic Energy, Ltd., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective April 21, 1998.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2720–000].

Take notice that on April 28, 1998, Consolidated Edison Company of New York, Inc. (CECONY), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Consolidated Edison Solutions, Inc., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

CECONY states that a copy of this filing has been served by mail upon Consolidated Edison Solutions, Inc.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power

[Docket No. ER98–2721–000]

Take notice that on April 28, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, unexecuted Service Agreements under WWP's FERC Electric Tariff First Revised Volume No. 9, with California Independent Service Operator and The California Power Exchange. WWP requests waiver of the prior notice requirement and requests an effective date of April 1, 1998.

Also tendered for filing is a Certificate of Concurrence for The Montana Power Trading & Marketing Company, formerly Montana Power Company.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas And Electric Company

[Docket No. ER98–2722–000]

Take notice that on April 28, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Cargill-Alliant, LLC under LG&E's Open Access Transmission Tariff.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER98–2723–000]

Take notice that on April 28, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western

Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company) and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Sterling Municipal Light Department.

NUSCO states that a copy of this filing has been mailed to Sterling Municipal Light Department and the Massachusetts Department of Public Utilities.

NUSCO requests that the rate schedule change become effective on May 1, 1998.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98–2724–000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc., and the Town of Richlands, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the Town of Richlands, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–2725–000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc., and the City of Danville, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Danville, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Energy Spring, Inc.

[Docket No. ER98–2772–000]

Take notice that on April 28, 1998, The Energy Spring, Inc., submitted for filing a notice of name change prepared in accordance with the provisions of 18 CFR 35.16 and 131.51 notifying the Commission that effective April 7, 1998, The Energy Spring, Inc., has legally changed its name to Atlanta Gas Light Services, Inc. (AGLS). AGLS adopts, ratifies and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by The Energy Spring, Inc., effective April 28, 1998:

The Energy Spring, Inc.
Rate Schedule FERC No. 1

Atlanta Gas Light Services, Inc.'s filing is available for public inspection at its offices in Atlanta, Georgia.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12228 Filed 5–7–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6011–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) for renewal to the Office of Management and Budget (OMB) for review and approval: Verification of test parameters and parts lists for light-duty vehicles and light-duty trucks, OMB Control Number 2060–0094, expiring 08/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 1998.

ADDRESSES: Vehicle Programs & Compliance Division (6405J), 401 M Street, SW, Washington, D.C. 20460. Interested persons may request a copy of this ICR, without charge, by writing, faxing, or phoning the contact person below.

FOR FURTHER INFORMATION OR A COPY: Sonny Kakar, Office of Mobile Sources, Vehicle Programs & Compliance Division, (202) 564–9467, (202) 565–2057 (fax), E-mail address: kakar.sonny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are manufacturers of light-duty vehicles and light-duty trucks.

Title: Verification of test parameters and parts lists for light-duty vehicles and light-duty trucks, OMB Control Number 2060–0094, expiration date 08/31/98. This is a request for an extension of currently approved collections.

Abstract: The EPA tests in-use vehicles in order to enforce compliance with light-duty vehicle and light-duty truck emission standards. The Federal Test Procedure (FTP), which is used for determining compliance, requires test parameters and procedures that are necessary to conduct a valid test. Therefore, after EPA has selected these parameters and procedures from previously submitted manufacturer

data, EPA gives the motor vehicle manufacturer the opportunity to review and verify that EPA has selected the correct parameters and procedures for vehicle emission testing. Providing part numbers gives the manufacturer the opportunity to help ensure that defective or incorrect parts will be replaced by those which the manufacturer feels are necessary to correctly evaluate the emissions performance of the vehicles tested. Though this information request is voluntary, EPA uses the manufacturers' input as part of the verification of our work. If this information is not reviewed and provided by the manufacturers, EPA and the manufacturers may waste resources on tests that were performed improperly and the manufacturers may not have as much opportunity to participate in a compliance program that has the potential to adversely affect them.

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.

EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual burden for this collection of information is estimated to average 150 hours and $4950 for the manufacturers and 150 hours and $5400 for the government. Approximately 75 requests may be made annually with an average of 2 hours spent on each request by both entities. The total costs are attributed to labor hours and overhead since there is no capital investment required for this collection of information. 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.

Dated: April 30, 1998.

Richard Wilson,

Acting Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 98–12304 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6011–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Industry Screener Questionnaire: Phase I Cooling Water Intake Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR number 1828.01). The ICR describes the nature of the information collection activities and its expected burden and cost. In particular, the ICR describes the collection methodology EPA will use to distribute the data collection instrument and includes a representative sample of the data collection instrument.

DATES: Comments must be submitted on or before June 8, 1998.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer by phone at (202) 260–2740, e-mail at farmer.sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/ICR. In all requests, refer to EPA ICR No. 1828.01.

SUPPLEMENTARY INFORMATION:

Title: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR No. 1828.01). This is a new collection.

Abstract: The U.S. Environmental Protection Agency (''EPA'') is currently developing regulations under section 316(b) of the Clean Water Act (''CWA''), 33 U.S.C. Section 1326(b). Section 316(b) provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. Section 316(b) is unique in that it applies to the intake of water and not the discharge. The intent is to minimize the impingement and entrainment of fish and other aquatic organisms as they are drawn into an industrial facility's cooling water intake. As the result of a lawsuit by a coalition of environmental groups headed by the Hudson Riverkeeper (*Cronin, et al.* v. *Reilly*, 93 Civ. 0314 (AGS)), the United States District Court, Southern District of New York entered a Consent Decree on October 10, 1995. The Consent Decree established a seven year schedule for EPA to take final action with respect to regulations addressing impacts from cooling water intake structures.

The screener questionnaire contains three types of questions. These questions are either scoping, stratifying, or characterizing in nature. EPA intends to use data from the scoping questions to determine who is potentially in scope of Section 316(b). EPA intends to use data from stratifying questions to support the subsequent survey sample frame development for the detailed industry questionnaire. EPA intends to use data from the characterizing questions to assist EPA in structuring the subsequent detailed questionnaire and to support the Agency's development of Section 316(b) regulations. The screener questionnaire collects information on such topics as cooling water use within industry groups; cooling water intake structure location, design configurations, construction, and capacity; and types of intake water sources. In addition, EPA is requesting facility and firm level economic data. This economic data will enable EPA to consider cooling water use across a broad variety of facility and firm sizes. The subsequent detailed questionnaire is structured to seek more in-depth information on the unique features of cooling water use and other

important intake structure and environmental characteristics.

EPA has the authority to collect this information under Section 308 of the CWA (33 U.S.C. Section 1318). All recipients of the screener questionnaire are required to complete and return the questionnaire to EPA. The survey instrument will be mailed after OMB approves the ICR. 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** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 18, 1997. EPA received six sets of comments (75 comments in all). EPA's response to these comments are presented in Attachment 4 of the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50 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: Nonutility Power Producers (SIC 49 and all other Industrial Self-Generators), Paper and Allied Products (SIC 2611, 2621, and 2631), Chemical and Allied Products (SIC 28 except 2895, 2893, 2851, and 2879), Petroleum and Coal Products (SIC 2911), and Primary Metals (SIC 3312, 3315, 3316, 3317, 3353, 3363, 3365, and 3366).

Estimated number of respondents: 2,600.

Frequency of Response: This is a one time collection.

Estimated total Annual Hour Burden: 130,000 hours.

Estimated total annualized cost burden: $7,125,300.

As a result of the insights gained from the public comment and pretest activities, EPA reduced the burden on respondents by simplifying and shortening the screener questionnaire. In particular, EPA moved several financial questions back so that only those facilities that are within the scope of CWA Section 316(b) will have to answer those questions. In addition, EPA reduced the level of detail of the questions in the electricity generation section. EPA has also lengthened the response time from 30 to 60 days.

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 No. 1828.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, PPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 4, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–12308 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6011–5]

Contractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency has authorized the following subcontractor to access information that has been, or will be, submitted to the EPA under section 114 of the Clean Air Act (CAA) as amended: Caldwell Environmental, Inc., 6205 Winthrop Drive, Raleigh, NC 27612. Some of this information may be claimed to be confidential business information (CBI) by the submitter. This subcontractor will be providing support to the EPA under contracts 68–D6–0008 and 68–D6–0010. The prime contractor on this contract is EC/R, Incorporated, 2327 Englert Drive, Suite 100, Durham, North Carolina, 27713.

DATES: Access to confidential data submitted to EPA will occur no sooner than May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Melva Toomer, Document Control Officer, Office of Air Quality Planning and Standards (MD–11), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that the EPA may provide the above mentioned subcontractor access to these materials on a need-to-know basis. Under the direction of the prime contractor, this subcontractor will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in developing Federal Air Pollution Control Regulations.

In accordance with 40 CFR 2.301(h), the EPA has determined that the above subcontractor requires access to CBI submitted to the EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contract. The subcontractor's personnel will be given access to information submitted under section 114 of the CAA. The subcontractor's personnel will be required to sign nondisclosure agreements and will receive training on appropriate security procedures before they are permitted access to CBI.

Clearance for access to CAA CBI is scheduled to expire on September 30, 2001 under contract 68–D6–0008 and contract 68–D6–0010.

Dated: May 1, 1998.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–12305 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed April 27, 1998 Through May 01, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980149, Draft Supplement, BLM, MT, Judith-Valley-Phillips Comprehensive Resource Management Plan, New Information Addressing Oil and Gas Leasing on Federal Minerals, Implementation, Lewistown District, Judith Basin,

Fergus, Petroleum, Phillips and Valley Counties, MT, Due: August 06, 1998, Contact: Jerry Majerus (406) 538–7461.

EIS No. 980150, Final EIS, COE, AZ, Rio Salado Environmental Restoration of two Sites along the Salt River; (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ, Due: June 08, 1998, Contact: Alex Watt (213) 452–3860.

EIS No. 980151, Final EIS, AFS, KY, Daniel Boone National Forest Off-Highway Vehicle (OHV) Management Policy, Modification, Several Counties, KY, Due: June 08, 1998, Contact: Benjamin T. Worthington (606) 745–3100.

EIS No. 980152, Draft EIS, USA, Stratford Army Engine Plant (SAEP) Disposal and Reuse, Implementation, City of Stratford, Fairfield and New Haven Counties, CT, Due: June 22, 1998, Contact: Leslie Sullivan (703) 697–0153.

EIS No. 980153, Draft EIS, NPS, MS, Natchez Trace Parkway, Construction of Section 3X Southern Terminus, Adam Counties, MS, Due: July 07, 1998, Contact: Wendell Simpson (601) 680–4003.

EIS No. 980154, Final EIS, FHW, CA, CA–101/Cuesta Grade Highway Improvements, 1.1 Miles north of Reservoir Canyon Road to the Cuesta Grade Overhead, Funding and Permit Issuance, San Luis Obispo County, CA, Due: June 08, 1998, Contact: John R. Schultz (916) 498–5041.

EIS No. 980155, Draft EIS, DOE, SC, Tritium Extraction Facility (TEF), Construction and Operation near the Center of Savannah River Site at H Area, (DOE/EIS–0271D), Aiken and Barnwell Counties, SC, Due: June 22, 1998, Contact: Andrew R. Grainger (800) 881–7292.

EIS No. 980156, Draft EIS, COE, GA, SC, Savannah Harbor Section 203 Expansion Project, Channel Deepening and Harbor Improvements, Georgia Ports Authority, Federal Navigation Project, Chatham County, Ga and Jasper County, SC, Due: June 22, 1998, Contact: William Bailey (912) 652–5781.

EIS No. 980157, Draft EIS, AFS, OR, Moose Subwatershed Timber Harvest and Other Vegetation Management Actions, Central Cascade Adaptive Management (CCAMA), Willamette National Forest, Sweet Home Ranger District, Linn County, OR, Due: June 22, 1998, Contact: Donna Short (541) 367–5168.

EIS No. 980159, Final EIS, UAF, FL, CA, Evolved Expandable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA, Due: June 08, 1998, Contact: Patty Vaught (703) 604–0561.

EIS No. 980160, Final EIS, NSF, Amundsen-Scott South Pole Station, Proposal to Modernize through Reconstruction and Replacement of Key Facilities, Antarctica, Due: June 08, 1998, Contact: Joyce A. Jatko (703) 306–1032.

EIS No. 980161, Draft EIS, BLM, AZ, Hualapai Mountain Land Exchange/ Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ, Due: July 27, 1998, Contact: Don McClure (520) 692–4400.

This EIS was inadvertently omitted from the 04–24–98 **Federal Register**. The official 45 days NEPA review period is calculated from 04–24–98.

Dated: May 5, 1998

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–12297 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 20, 1998 Through April 24, 1998 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 the FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–K65203–CA Rating EC2, Sirretta Peak Motorcycle Trail Construction, Approval and Implementation, Sirretta Peak/Machine Creek Area, Kern Plateau, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA.

Summary: EPA expressed environmental concerns about potential adverse impacts to the watershed and wildlife habitat from the construction and use of a motorized trail in a roadless area.

ERP No. D–BLM–K67047–NV Rating EC2, Trenton Canyon Mining Project, Construction, Operation and Expansion, Plan of Operation, Valma and North Peak Deposits, Humboldt and Lander Counties, NV.

Summary: EPA expressed environmental concerns to the proposed project, based on a lack of analysis of a reasonable range to project alternatives, and potential environmental degradation to waters of the United States. EPA asked for additional information, including information on a sequential backfilling alternative, waste rock and pit wall rock characterization, cumulative impact, project description, comprehensive mitigation and monitoring plan.

ERP No. D–COE–E39042–GA Rating EC2, Latham River/Jekyll Creek Environmental Restoration Project (Section 1135), To Establish the Without Project Condition, Atlantic Intracoastal Waterway (AIWW), Glynn County, GA.

Summary: EPA expressed environmental concerns over the long-term impacts to wetlands resources in the project and the potential for increased development on Jekyll Island.

ERP No. D–COE–K32049–CA Rating EO2, San Francisco Bay to Stockton Phase III (John F. Baldwin) Navigation Channel Project, Construction and Operation, For Deliver of Petroleum to Refineries, Storage Terminals and Other Facilities, COE Section 10 and 404 Permits, US Coast Guard Permit, Contra Costa County, CA.

Summary: EPA expressed environmental objectives with two action alternatives because, according to the DEIS, deepening 16 miles of navigation channel would result in adverse water quality impacts, specifically intrusion of salt water into the Sacramento-San Joaquin Delta that would exceed salinity standards. This increased salinity intrusion would have adverse effects on municipal drinking water supplies, fish and wildlife resources. EPA also expressed concerns on Clean Water Act Section 404 issues associated with a pipeline system alternative and noted that all three action alternatives may require a conformity determination for oxides of nitrogen (an ozone precursor) due to the San Francisco Bay Area's ozone maintenance status.

ERP No. D–FRC–B03009–ME Rating EC2, Maritimes Phase II Project, Construct and Operate an Interstate Natural Gas Pipeline, COE Section 10 and 404 Permits, Endangered Species Act (ESA) and NPDE's permits, US

Canada border at Woodland (Burleyville) Maine and Westbrook Maine.

Summary: EPA requested additional information about the impacts of the proposed pipeline with regard to wetlands, eelgrass, drinking water, groundwater supply, and secondary impacts in order to fully evaluate the environmental acceptability of the proposed project.

ERP No. D–FRC–J02035–00 Rating EC2, Alliance Natural Gas Pipeline Project, Construction and Operation, Funding, NPDES Permit, COE Section 10 and 404 Permit, ND, MN, IA and IL.

Summary: EPA expressed environmental concerns and requested additional information on the following areas; Purpose and Need, Alternatives Evaluation, Resource Surveys (Threatened and Endangered Species, Cultural and Historical), Agricultural Land/Non-Agricultural Land, Waterbody/Wetland Crossing Procedures, Wetland/Woodland Loss Compensation and description of Extra Work Areas.

ERP No. DS–COE–L36011–00 Rating EC2, Columbia and Lower Willamette River Federal Navigation Channel, Integrated Dredge Material Management Study, OR and WA.

Summary: EPA's expressed environmental concerns that the Corps should take more effort at advanced identification and management of in-stream dredged material disposal sites. EPA also requested more information regarding the environmental impacts of upland disposal of dredged material.

Dated: May 5, 1998.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 98–12298 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) Off Wilmington, NC, Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA) Region 4.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the final designation of an ODMDS off Wilmington, North Carolina.

PURPOSE: The U.S. EPA, Region 4, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) and in cooperation with the U.S. Army Corps of Engineers, Wilmington District, will prepare a Draft EIS on the designation of an ODMDS off Wilmington, North Carolina. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued Pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Douglas K. Johnson, U.S. Environmental Protection Agency, Region 4, Coastal Programs Section, 61 Forsyth Street, Atlanta, Georgia 30303, phone 404–562–9386 or Mr. Philip M. Payonk, U.S. Army Corps of Engineers, Wilmington District, Environmental Resources Section, P.O. Box 1890, Wilmington, North Carolina 28402–1890, phone 910–251–4589.

SUMMARY: Ongoing needs for ocean disposal of dredged sediments and proposed improvements to the Wilmington Harbor navigation channel have resulted in the need for designation of a new ODMDS off Wilmington, North Carolina. Based on site surveys and anticipated levels of site use, the capacity of the existing Wilmington ODMDS will be reached in seven to 10 years. The annual volume of maintenance dredged material taken to the ocean for disposal from the Wilmington Harbor area is about two million cubic yards per year. The recently authorized Wilmington Harbor Federal navigation channel improvements (deepening and other channel modifications) will produce approximately 19 million cubic yards of dredged material for ocean disposal. The channel improvements will realign the ocean bar channel directly across the Wilmington ODMDS rendering the site obsolete. The channel would be realigned to avoid rock dredging and blasting and the environmental concerns associated with those activities.

The relocation of the ODMDS would provide an opportunity to add separation between the Wilmington ODMDS and nearby shrimp trawling bottoms. The shrimpers have complained that wood debris attributed to dredged materials placed within the ODMDS interfere with shrimping.

Need for Action: The Corps of Engineers, Wilmington District, has requested that EPA designate a new ODMDS off Wilmington, North Carolina for the disposal of dredged material from the Wilmington Harbor area, when ocean disposal is the preferred disposal alternative. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives:

1. No action. The no action alternative is defined as not designating an ocean disposal site.

2. Alternative disposal sites in the nearshore, mid-shelf, and shelf break regions.

Scoping: Scoping will be accomplished by correspondence and meetings, in late Spring or early Summer, 1998, with affected Federal, State and local agencies, and interested parties.

Estimated Date of Release: The Draft EIS will be made available in October 1999.

Responsible Official: John H. Hankinson, Jr., Regional Administrator, Region 4.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 98–12299 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6010–9]

Salt River Pima-Maricopa Indian Community; Tentative Approval of an Alternative Liner System Design and Use of Alternative Daily Cover Material for the Salt River Municipal Solid Waste Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative determination on application of the Salt River Pima-Maricopa Indian Community for approval of an alternative liner system design and use of alternative daily cover material for the Salt River Municipal Solid Waste Landfill, public hearing and public comment period.

SUMMARY: Subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6941–6949a requires EPA to establish minimum federal criteria to ensure that municipal solid waste landfills are designed and operated in a manner that protects human health and the environment. These standards are codified at 40 CFR part 258. Generally, these criteria are technical standards and are self-implementing. For many of these criteria, part 258 also establishes a flexible performance-based standard as an alternative to the self implementing regulations.

The Salt River Pima-Maricopa Indian Community submitted applications for approval to use two of the flexible

standards at the Salt River Municipal Solid Waste Landfill. One application requests use of a geosynthetic clay liner in place of a composite liner. The second application requests use of a tarp system as cover in place of earthen material. EPA reviewed the applications and all supplementary material and tentatively approves these requests. This tentative approval applies solely to the Salt River Municipal Solid Waste Landfill located on Salt River Pima-Maricopa Indian Reservation in Arizona.

Although RCRA does not require EPA to hold a public hearing on any site-specific flexibility request, Region 9 has scheduled a public hearing on these tentative approvals. Details appear below in the **DATES** section of this notice. The Salt River Pima-Maricopa Indian Community's applications and all supplementary material are available for public review and comment.

DATES: All comments on the Salt River Pima-Maricopa Indian Community's applications for approval of site-specific flexibility must be received by the close of business on June 10, 1998. A public hearing is scheduled for June 10, 1998 from 5–7 p.m. At the hearing, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing at the hearing on June 10, 1998. The hearing may adjourn earlier than 7:00 pm if all of the speakers deliver their comments before that hour. Representatives of the Salt River Pima-Maricopa Indian Community and the Salt River Municipal Solid Waste Landfill will be present at the public hearing.

ADDRESSES: Written comments should be sent to Ms. Susanna Trujillo, Mail Code WST–7, US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The public hearing will be held at Salt River Pima-Maricopa Indian Reservation, Community Development Conference Room, 1005 E. Osborne Road, Scottsdale, Arizona 85256. For further information, contact Steve Parker at (602) 850–8024.

Copies of the Salt River Pima-Maricopa Indian Community's applications for site-specific flexibility are available for inspection and copying at: Salt River Pima-Maricopa Indian Reservation Administration Building, 1005 E. Osborne Road, Scottsdale, Arizona 85256. Contact: Lonita Jim, Tribal Secretary (602) 850–8000 and the US EPA Region 9 Library, 75 Hawthorne Street 13th Floor, San Francisco, California, 94105, telephone (415) 744–1510, from 9 am to 5 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Susanna Trujillo, Mail Code WST–7 telephone (415) 744–2099.

SUPPLEMENTARY INFORMATION:

A. Regulatory Background

Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6941–6949a, governs the disposal of nonhazardous solid waste and of small-quantity hazardous waste not regulated under Subtitle C of RCRA. Subtitle D prohibits ''open dumping'' and EPA established criteria for determining which solid waste facilities classified as ''sanitary landfills'' which is ''open dumps.'' 40 CFR part 257, subpart A. Pursuant to HSWA, EPA added revised criteria to establish minimum federal standards to ensure that municipal solid waste landfills (MSWLF) are designed and operated in a manner that protects human health and the environment. The Federal revised criteria are codified at 40 CFR part 258. RCRA also requires states to implement permit programs to ensure that MSWLF facilities comply with the revised criteria (40 U.S.C. 6945(c)). EPA determines whether each state has developed an adequate solid waste permitting program and ''approves'' those states. In states that do not develop an adequate program, the regulations set forth in part 258 are self-implementing and apply to owners and operators of MSWLF units without additional EPA approval or review (40 CFR 258.1).

For many of the criteria, part 258 establishes a flexible performance standard as an alternative to the self-implementing regulation. The flexibility provided in the MSWLF criteria allows for the consideration of site-specific conditions in designing and operating an MSWLF at the lowest cost possible while ensuring protection of human health and the environment. The flexible standard is not self-implementing, and use of the alternative standard is generally approved by the Director of an approved state. Part 258 does not currently provide owners and operators of MSWLF units located in Indian Country with a mechanism for obtaining approval of the flexible performance standards.

Indian tribes are defined as ''municipalities'' under RCRA section 1004(13), 42 U.S.C. 6903. As a ''municipality,'' the tribe would seek approval of design flexibility from the appropriate approved state. However, states are generally precluded from enforcing their civil regulatory programs in Indian Country absent an explicit Congressional authorization. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Including tribes as part of section 1004(13) was a definitional expedient, to avoid adding the phrase ''and Indian tribes or tribal organizations or Alaska Native villages or organizations'' wherever the term ''municipality'' appeared. By this definition, Congress did not intend to change the sovereign status of tribes for purposes of RCRA. In *Backcountry Against Dumps* v. *EPA*, 100 F.3d 147, 151 (D.C.Cir. 1996), the District of Columbia Circuit Court determined that the inclusion of Indian Tribes as ''municipalities'' ''does not strip the tribe of its sovereign authority to govern its own affairs * * * [the tribe has the authority] to create and enforce its own solid waste management plan.'' RCRA does not grant the regulatory authority to develop and implement solid waste management plans to municipalities.

Owners and operators of MSWLF units in Indian Country are not subject to state authority, they cannot obtain approval from the state for the performance standards included in part 258. Yet, the Federal revised criteria are silent as to the process by which MSWLF units in Indian Country can apply for the alternate standards.

EPA proposes this site-specific rule to allow the Salt River Pima-Maricopa Indian Community (''Community''), an owner/operator of an MSWLF in Indian Country, the same flexibility as owners and operators of MSWLF units in approved states. EPA derives its authority to promulgate this rule from sections 4004, 4005, and 4010 of RCRA, 42 US.C. 6944, 6945, and 6949a. These sections provide the basis on which EPA developed the criteria distinguishing open dumps from landfills and the revised criteria in part 258. Nothing in these provisions limits EPA's ability to issue site-specific criteria. In this instance, where the existing part 258 regulations do not contain a process for approval of the flexible performance standards for MSWLF units in Indian Country, it is appropriate to issue a site-specific rule to supplement part 258 and address this unique situation. The U.S. District Court in the District of South Dakota reviewed this issue directly and upheld EPA's authority to issue a site-specific rule to provide design flexibility under subtitle D of RCRA. (*Yankton Sioux Tribe* v. *US EPA*), 950 F.Supp. 1471 (D.S.D. 1996). The *Yankton* court determined that EPA

appropriately created an ''alternative mechanism'' to provide flexibility to the relevant MSWLF in Indian Country. The U.S. Court of Appeals for the D.C. Circuit also supports EPA's authority to issue such a site-specific rule under RCRA Subtitle D. (See *Backcountry Against Dumps* v. *EPA*, 100 F.3d at 152 (1996).) For a description of the suggested process used to apply for and approve flexibility requests in Indian Country, see EPA draft guidance entitled ''Site-Specific Flexibility Requests for MSWLFs in Indian Country'' (August 1997 Document Number: EPA530–R–97–016).

B. EPA's Tentative Determination

1. Alternative Liner System Design (40 CFR 258.40)

The Salt River Landfill (Landfill) is located on 200 acres of property east of Phoenix, Arizona. It is operated by the Salt River Pima-Maricopa Indian Community and serves as a sanitary landfill for the tri-city area of Mesa, Tempe, and Scottsdale, Arizona. Landfill operations began in October 1993 and are expected to continue until at least the year 2003. The landfill currently consists of three lined cells and three undeveloped cells. The three operational cells are lined with the composite liner prescribed by 40 CFR 258.40(b). On May 23, 1997, the Community submitted an application to the EPA requesting approval to use a geosynthetic clay liner in place of a composite liner for the undeveloped cells of the Landfill.

The federal revised criteria do not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in 40 CFR 258.40 as a guideline for analyzing the Community's application.

Generally, 40 CFR 258.40 (a)(1), (c), and (d) require the following:

- The alternative liner design ensures that constituent concentrations of the chemicals listed in Table 1 of the criteria will not be exceeded in the uppermost aquifer at the relevant point of compliance; and
- The alternative liner design addresses the hydrogeologic characteristics of the landfill site, climate, volume, and physical and chemical characteristics of the leachate, and models potential contaminant migration.

EPA reviewed all information submitted by the Community and tentatively determined that the proposed alternative liner meets or exceeds the performance standards set forth in 40 CFR 258.40(a)(1), (c), and (d).

2. Alternative Daily Cover Materials (40 CFR 258.21)

The federal revised criteria requires that MSWLF units must use six inches of earthen material to cover disposed solid waste each day. 40 CFR 258.21(b) provides flexibility by allowing use of alternative materials and an alternative thickness if they control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

On June 2, 1997, the Community submitted an application to the EPA requesting approval to use any alternative daily cover material that Arizona has approved for that state. These materials consist of tarps, foams, chipped green waste, drinking water treatment residues, and chipped tires. The Community subsequently restricted their current application to the use of tarps as an alternative daily cover material.

The federal revised criteria does not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in 40 CFR 258.21 as a guideline for analyzing the Community's application. The Community proposes to use the *Tarpomatic* tarping operation, consisting of a polypropylene tarp rolled over the landfill material at the end of each business day and retrieved at the beginning of the next business day.

EPA reviewed all information submitted by the Community and tentatively determined that the proposed alternative daily cover meets or exceeds the performance standards set forth in Section 258.21(b)

Public Comment

EPA Region 9 will hold a public hearing on this tentative determination from 5:00 to 7:00 pm on June 10, 1998, at Salt River Pima-Maricopa Indian Reservation, Community Development Conference Room, 1005 E. Osborne Road, Scottsdale, Arizona 85256. For further information, contact Stu Baker at (602) 941–3427.

The public may submit written comments on this tentative determination until June 10, 1998. Copies of the Community's applications and supplementary material are available for inspection at: Salt River Pima-Maricopa Indian Reservation Administration Building, 1005 E. Osborne Road, Scottsdale, Arizona 85256. Contact: Lonita Jim, Tribal Secretary (602) 850–8000 and the US EPA Region 9 Library, 75 Hawthorne Street 13th Floor, San Francisco, California, 94105, telephone (415) 744–1510, from 9 am to 5 p.m. Monday through Friday.

EPA will consider all public comments on its tentative determination received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision not to approve one or both of the Community's applications. EPA will make a final determination on whether or not to approve the Community's applications and will give notice of this decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Executive Order 12866

Executive Order 12866 requires Office of Management and Budget review of ''significant regulatory actions.'' Significant regulatory actions are defined as those that (1) have an annual effect on the economy $100 Million or more or adversely affect a sector of the economy, including 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 or obligations of recipients; or (4) raise novel legal or policy issues. This tentative decision is a not a ''significant regulatory action'' and is not subject to the requirements of Executive Order 12866.

Executive Order 12875

EO 12875 applies to regulations that create an unfunded mandate upon state, local or tribal government. As this tentative determination is site-specific and applies only to the Community as owner and operator of the Landfill's MSWLF, this tentative determination does not create an unfunded mandate for state, local, or tribal government.

Executive Order 13045

Executive Order 13045 applies to rulemaking that (1) has an annual effect on the economy of $100 Million or more or adversely affects any sector of the economy and (2) may disproportionately create an environmental health or safety risk for children. This tentative decision to approve alternate landfill requirements will not result in such impacts and is not subject to the requirements of EO 13045.

Executive Order 12898

Executive Order 12898 requires agencies to consider impacts on the health and environmental conditions in

minority and low-income communities with the goal of achieving environmental justice. This tentative determination to approve the Community's requests for use of an alternative landfill standard is consistent with EO 12898. By allowing the Community to use the site-specific flexibility provided by part 258, the Community is placed on a parity with those owners and operators of MSWLF units regulated by authorized state Subtitle D programs. This tentative determination fosters non-discrimination in implementing Subtitle D of RCRA.

The National Technology Transfer and Advancement Act (NTTAA)

The NTTAA requires agencies to consider using suitable voluntary consensus standards to carry out policy objectives or activities. As a rule of particular applicability, this tentative determination to approve the alternative landfill requirements is not subject to the NTTAA.

Paperwork Reduction Act

This tentative decision is not an information collection request subject to the Paperwork Reduction Act.

The Regulatory Flexibility Act

As a rule of particular applicability, this tentative determination to approve the alternative landfill requirements is not subject to the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act.

The Unfunded Mandates Reform Act

This tentative determination is a rule of particular applicability and does not include a federal mandate imposing enforceable duties upon state, local, or tribal governments. On this basis, this tentative determination is not subject to the requirements of the Unfunded Mandates Act.

Authority: This notice is issued under the authority of sections 2002, 4004, 4005, and 4010 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6944, 6945, and 6949a. The Regional Administrator is making this decision in accordance with EPA Delegations Manual No. 8–47 (October 8, 1993).

Dated: April 27, 1998.

Felicia Marcus,

Regional Administrator.

[FR Doc. 98–12150 Filed 5–7–98; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

American Heritage Rivers Initiative

AGENCY: Council on Environmental Quality.

ACTION: Description of Administration policy regarding congressional opposition to designation of American Heritage Rivers.

Immediately following the 1997 State of the Union Address, President Clinton instructed the Cabinet to work with communities on the design of the American Heritage Rivers initiative to support community-led efforts that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage. In response to this initiative, communities across the country nominated 126 rivers (or stretches of rivers) for designation as an American Heritage River. An advisory committee of nonfederal experts will review all nominations and recommend rivers to the President for designation.

An interagency working group convened by the White House developed guidelines for the review of nominations. As stated in the **Federal Register** Notice of September 17, 1997 and President Clinton's Executive Order of April 7, 1998, the advisory committee will provide an assessment of the following for each nomination:

1. The scope of each nomination's application and the adequacy of its design to achieve the community's goals;

2. Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;

3. The extent to which the community's plan of action is clearly defined and the extent to which the plan addresses all three American Heritage Rivers objectives—natural resource and environmental protection, economic revitalization, and historic and cultural preservation—either through planned cooperative action or past accomplishments.

4. The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and State governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

The Administration believes that public input into the design of the initiative and into individual river nominations is critically important. Representatives from Federal agencies traveled around the country to meet with community organizations, local governments and industry associations to learn their views on the initiative and incorporate them into its design.

On May 19, 1997, the Administration published a notice in the **Federal Register** requesting comment about the initiative's structure, the criteria used to determine eligible rivers, the needs of communities for technical assistance and funding, and other items. The Administration incorporated many of the more than 1,700 comments received during the more than 90 days of public input into the final design of the initiative that was published on September 17, 1997 in the **Federal Register**. This notice also included how communities apply for designation, specifically asking them to demonstrate strong and diverse public support for the nomination.

Nominations closed on December 10, 1997. Members of Congress were sent copies of nominations from their districts and asked to provide comments to the Administration by January 23, 1998.

The Administration received more than 200 responses from Members of Congress, both in support and opposition, to particular nominations. Overall, Members expressed support for rivers that were nominated in their districts or State by more than a 4:1 ratio.

The views of Members of Congress on specific nominations have particular importance in evaluating applications. Elected officials such as Members of Congress represent a diversity of concerns within a community that need to be taken into account. Furthermore, the views of Members of Congress are especially relevant in this case since American Heritage Rivers is a Federal initiative on behalf of those communities. The Administration concluded accordingly that, under the conditions described in this notice, if a Member of Congress opposes the nomination of a river in his or her district, it means that a sufficient strength and diversity of support were not demonstrated for such a designation, and that the nomination did not satisfy that particular criteria.

In order to respond to the views of Members of Congress who oppose specific nominations, the Administration has agreed that the nomination of certain rivers or stretches of river would be excluded from consideration for designation under this initiative, if the Member so requested.

The way in which this exclusion works is summarized in this notice as follows.

A Member of the U.S. House of Representatives may request that a nomination as an American Heritage River not be considered for selection. If the entire nominated portion of the river flows through the district of that Member, then the nomination will not be considered by the advisory committee. If only a portion of the river flows through the Member's district, then that portion of the river would not be included in any designation by the President. The advisory committee in its consideration of that nomination would need to weigh the extent to which that exclusion affects the merit of the balance of the nomination. A Member may only make such a request for rivers, or portions of rivers, that flow through his or her district and may not exclude from consideration the nomination of a river in the district of another Member.

Likewise, the Senators from a state may request that a nomination as an American Heritage River not be considered for selection. A request made by both Senators will be dispositive of the application. If the entire nominated portion of the river flows through the state of the Senators, then the nomination will not be considered by the advisory committee. If only a portion of the river flows through the Senator's state, then that portion of the river would not be included in any designation by the President. The advisory committee in its consideration of that nomination would need to weigh the extent to which that exclusion affects the merit of the balance of the nomination. A Senator may only make such a request for rivers or portions of rivers that flow through his or her state and may not exclude from consideration the nomination of a river in another state. Of course, if a single Senator opposes a nomination, and the other Senator and the relevant House Member express no view, the nomination will not be considered by the advisory committee.

Where the view of a single Senator who opposes a nomination conflicts with the position of the other Senator from that state or a Member of Congress (for that part of a river which he or she represents) because one or the other supports the nomination, then the views of all members of the Congressional delegation will be presented to the advisory committee. In such cases, the advisory committee will evaluate the merits of the nomination and the degree to which the criteria of strength and diversity of support have been satisfied by the application. However, if any House Member opposes a nomination, then no designation of any stretch of the river will be considered in his district as previously outlined in this notice.

Nine rivers completely eliminated from consideration by Congressional opposition:

- Clearwater River, ID, MT—Representative Helen Chenoweth (ID–1), Senator Conrad Burns (MT), Senator Larry Craig (ID), Representative Rick Hill (MT–ALL), Senator Dirk Kempthorne (ID);
- Gunnison River, CO—Representative Scott McInnis (CO–3), Senator Ben Nighthorse Campbell (CO);
- Osage River, MO—Representative Ike Skelton (MO–4);
- St. Mary's River, MI—Representative Bart Stupak (MI–1);
- San Joaquin River, CA—Representative George Radanovich (CA–19);
- San Juan River, NM—Representative Bill Redmond (NM–3);
- San Luis Rey River, CA—Representative Randy Cunnningham (CA–51), Representative Ron Packard (CA–48);
- Snohomish River, WA—Representative Jack Metcalf (WA–2);
- Upper Rio Grande, NM—Representative Bill Redmond (NM–3), Representative Steve Schiff (NM–1), Joe Skeen (NM–2).

Sixteen rivers affected in part by Congressional opposition:

- American River, CA—Representative John Doolittle (CA–4), Richard Pombo (CA–11);
- Arkansas River, AR, CO, OK, KS—Representative Marion Berry (AR–1), Senator Sam Brownback (KS), Representative Tom Coburn (OK–2), Representative Jay Dickey (AR–4), Representative Jerry Moran (KS–1), Representative Todd Tiahrt (KS–4), Asa Hutchinson (AR–3), Senator Tom Hutchinson (AR), Senator Ben Nighthorse Campbell (CO);
- Cold Water Creek, MO—Representative James Talent (MO–2);
- Columbia River, OR—Senator Gordon H. Smith (OR);
- French Broad River, NC—Representative Charles Taylor (NC–11);
- James River, VA—Representative Thomas Bliley, Jr. (VA–7);
- Jordan River, UT—Representative Christopher Cannon (UT–3);
- Mississippi River, MO—Representative Pat Danner (MO–6), Representative James Talent (MO–2);
- Missouri River, MT, MO, NE, SD—Representative Pat Danner (MO–6), Representative Rick Hill (MT–ALL), Representative Kenny Hulshof (MO–9), Representative James Talent (MO–2), Representative Ike Skelton (MO–4), Senator Sam Brownback (KS), Senator Conrad Burns (MT), Senator Hagel (NE), Representative John Thune (SD–ALL), Representative Vincent Snowbarger (KS–3);
- Ohio River, IN—Representative John Hostettler (IN–8);
- Ouachita River, LA/AR—Representative Jay Dickey (AR–4), Representative Asa Hutchinson (AR–3), Senator Tim Hutchinson (AR);
- St. John's River, FL—Representative David Weldon (FL–15), Representative Cliff Stearns (FL–6);
- San Antonio River, TX—Representative Lamar Smith (TX–21);
- South Platte River, CO—Senator Ben Nighthorse Campbell (CO);
- Santa Cruz River, AZ—Senator Jon Kyl (AZ);
- Yellowstone River, WY, MT—Representative Barbara Cubin (WY–ALL), Representative Rick Hill (MT–ALL), Senator Conrad Burns (MT), Senator Michael Enzi (WY), Senator Craig Thomas (WY);
- Williamette River, OR—Senator Gordon H. Smith (OR).

FOR FURTHER INFORMATION CONTACT: Karen Hobbs, Agency Representative, Council on Environmental Quality, Old Executive Office Building, Room 360, Washington, D.C. 20501. Phone: 202–395–7417; Fax: 202–456–6546.

Dated: May 6, 1998.

Kathleen A. McGinty,

Chair, Council on Environmental Quality.

[FR Doc. 98–12432 Filed 5–7–98; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1214–DR]

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1214–DR), dated April 9, 1998, and related determinations.

EFFECTIVE DATE: April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following area among those areas determined to have been adversely

affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1998:

Covington County for Public Assistance (already designated for Individual Assistance).

Walker County for Individual Assistance. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–12286 Filed 5–7–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3125–EM]

Arkansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Arkansas (FEMA–3125–EM), dated April 24, 1998, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 24, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and flooding on April 16, 1998, is of sufficient severity and magnitude to warrant an emergency declaration under subsection 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Arkansas.

You are authorized to provide assistance for temporary housing (provision of mobile homes) pursuant to subsection 502(a)(6) of the Stafford Act. FEMA will transport and donate the mobile homes to the State of Arkansas at time of delivery.

Pursuant to this emergency declaration, you are also authorized to provide emergency assistance, as you deem appropriate under Title V of the Stafford Act at 75 percent Federal funding.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Arkansas to have been affected adversely by this declared emergency:

Mississippi County.

FEMA has been authorized to provide mobile homes pursuant to subsection 502 (a)(6) of the Stafford Act. FEMA will transport and donate the mobile homes to the State of Arkansas at the time of delivery.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–12283 Filed 5–7–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Twiggs County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–12289 Filed 5–7–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1210–DR]

Republic of the Marshall Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA–1210–DR), dated March 20, 1998, and related determinations.

EFFECTIVE DATE: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost-share arrangement under FEMA–1210–DR is adjusted at 90 percent Federal funding for eligible costs for the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–12288 Filed 5–7–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1213–DR]

Federated States of Micronesia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Federated States of Micronesia, (FEMA–1213–DR), dated April 3, 1998, and related determinations.

EFFECTIVE DATE: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Federated States of Micronesia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 3, 1998:

Emergency protective measures (Category B) for the following areas:

Sorol in Yap State.

Oroluk and Pakin in Pohnpei State.

Etten, Tetiw, Piis-Paneu, and Pollap in Chuuk State.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–12287 Filed 5–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1215–DR]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1215–DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Carroll and Blount Counties for Individual Assistance.

Roane and Grainger Counties for Individual Assistance (already designated for Public Assistance).

Anderson and Dickson Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–12285 Filed 5–7–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the National Fire Academy.

DATES OF MEETING: June 25–27, 1998.

PLACE: Building J, Room 138, National Emergency Training Center, Emmitsburg, Maryland.

TIME: June 25, 1998, 8:30 a.m.–5:00 p.m.
June 26, 1998, 8:30 a.m.–9:00 p.m.
June 27, 1998, 8:30 a.m.–12 noon.

PROPOSED AGENDA: June 25, 26, and 27, 1998, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before June 12, 1998.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: April 24, 1998.

Carrye B. Brown

U.S. Fire Administrator.

[FR Doc. 98–12290 Filed 5–7–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSIONS

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–201049–001.

Title: Tampa-Tampa Bay International Wharfage Incentive Agreement.

Parties: Tampa Port Authority; Tampa Bay International Terminals, Inc.

Synopsis: The proposed amendment adds a commodity to the agreement. The

term of the agreement continues to run through March 31, 1999.

Agreement No.: 224–201050.

Title: NY–NJ/Ecuadorian Containerized Banana Volume Incentive Agreement.

Parties: Port Authority of New York and New Jersey; South Pacific Shipping Company Ltd. d/b/a; Ecuadorian Line.

Synopsis: The proposed agreement concerns the terms and conditions of a banana import incentive program. The term of the agreement runs through April 28, 1999.

Dated: May 4, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–12193 Filed 5–7–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, May 13, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–12385 Filed 5–6–98; 10:50 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98039]

Programs To Prevent the Emergence and Spread of Antimicrobial Resistance; Notice of Availability of Fiscal Year 1998 Funds

Introduction

The Centers for Disease Control and Prevention (CDC) is implementing a multifaceted effort to address the problem of antimicrobial resistance. As part of this, CDC announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program to provide assistance for the development and evaluation of demonstration projects to prevent and control the emergence and spread of antimicrobial resistance.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a), 317(k)(1), and 317(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 241(a), 247b(k)(1), and 247b(k)(2)).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies in the United States (U.S.). Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, including State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Note: An organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Also, only one application will be accepted from any single applicant.

Availability of Funds

Approximately $1.2 million is available in FY 1998 to fund approximately 2 to 3 awards. It is expected that awards will begin on or about August 15, 1998, and will be made for a 12-month budget period within a project period of up to 5 years. It is expected that the average annual award for the first 3 years of the project period will be $450,000 (direct costs and indirect costs), ranging from $300,000 to $600,000. The last 2 years will involve data collection and analysis only for purposes of evaluating the program; therefore, it is anticipated that lesser amounts of funding will be needed in these years.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Note: Approximately 50 percent of the available funds are allocated for projects focusing on community-based projects. Approximately 50 percent of the available funds are allocated for projects focusing on integrated health care delivery systems. Applicants should indicate clearly whether they consider their application to be primarily directed at community-based interventions or interventions in integrated health care delivery systems. (Applications addressing both are encouraged. However, for purposes of the evaluation process, the application must clearly state whether it is primarily addressing community-based interventions or interventions in integrated health care delivery systems.)

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part,

involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in section 503(a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

The introduction of antibacterial drug therapy in the 1940s led to a dramatic reduction in illness and death from infectious diseases over the past 50 years. Worldwide, antimicrobial drugs have spared the lives of millions of people for whom premature death or crippling complications would have been unavoidable. However, this situation is changing rapidly. Emergence of drug resistance in bacteria, fungi, parasites, and viruses is swiftly reversing the miracles of the past 50 years and threatens to create an era where antimicrobial agents are no longer useful for many common diseases. The identification this year of *Staphylococcus aureus* with reduced susceptibility to vancomycin in both Japan and the United States (U.S.) is particular cause for concern. At least 70 percent of the bacteria-causing, hospital-acquired infections are resistant to at least one antimicrobial agent commonly used for treatment. Among community-acquired pathogens, drug resistance among respiratory tract pathogens, particularly pneumococci, represents a growing problem. Pneumococcal strains have been identified that are not susceptible to any of the oral agents commonly used as therapy, and combination therapy with vancomycin now is recommended for life threatening pneumococcal infections due to increasing resistance among extended spectrum cephalosporins. The spread of resistance means that more toxic, more difficult to administer, more costly, or experimental antimicrobial agents must be used for therapy.

Factors that promote the spread of resistance differ between pathogens. In the community, transmission within families and in other settings where close contact may occur (*e.g.*, child care facilities); rates of antibiotic therapy, the agents used and their dose; and the impact of resistance on the fitness of a pathogen, all may affect the spread of resistance. For pathogens that cause nosocomial infections, health-care-associated transmission involving acute-care hospitals, long-term-care institutions, such as nursing homes, and non-institutionalized persons in the community receiving health care in their homes and/or ambulatory clinical settings also may be important. Few programs to reduce the development and spread of antimicrobial resistance have been implemented in whole communities. Strategies to prevent the spread of resistance among nosocomial pathogens which have proven successful within a single institution or a limited population of patients include the implementation of infection control guidelines and controls on antibiotics to limit inappropriate use. Antibiotic use has been controlled with formulary restrictions, intervention by infectious disease consultants and/or clinical pharmacologists, clinical practice guidelines for physicians, computer-assisted prescribing, and physician and patient educational programs.

Infection control guidelines include the use of barrier precautions, pre-admission and discharge screening, environmental controls, and cohorting. In the community, successful interventions have included education of physicians and patients, the development of clinical practice guidelines and their promotion by peer educators and opinion leaders, feedback to clinicians comparing their practices with those of their peers, decreasing availability of antibiotics, and changing the agents used, their dose, and the duration of therapy.

Purpose

This program is intended to evaluate the effectiveness and impact of strategies to control the spread of antimicrobial resistance within a larger population, such as a geographically defined community, the catchment area of large health-care delivery organization, or the population of one or more integrated health-care delivery systems.

Another purpose of this program is to conduct research which develop, implement, and evaluate programs designed to reduce the emergence and spread of antimicrobial resistance. It is anticipated that these programs will be effective and that they could subsequently be replicated widely in order to reduce antimicrobial resistance throughout the U.S. Applicants may submit applications that focus primarily on either (1) communities or (2) integrated networks of health facilities. This program is not intended to support an infection control program at an individual health-care facility or evaluation of a single intervention in a community or health-care setting.

Programs will address the problem of antimicrobial resistance through interventions potentially including, but not limited to:

1. Promoting more judicious antimicrobial use (e.g., using antimicrobials only when needed, using appropriate doses of antimicrobial agents, etc.).
2. Reducing transmission of antimicrobial resistant microorganisms.
3. Preventing colonization and infection through the use of vaccines.
4. Improving the ability to provide effective narrow spectrum therapy by rapidly and accurately diagnosing resistant microorgansims through the use of improved laboratory testing procedures and improved quality and flow of laboratory data.
5. Using improved means of communication with health-care providers to improve their use of antimicrobials, such as through the use of information management systems and Internet-based technology.

It is envisioned that funded projects will use a combination of approaches to achieve judicious antimicrobial use and other changes that will result in decreased appearance and spread of resistance. Funded projects will also be expected to conduct a multifaceted evaluation of many aspects of the program. An essential part of such an evaluation will be assessing the costs and cost savings associated with any proposed intervention.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A, (Recipient Activities), and CDC will be responsible for conducting activities under B (CDC Activities).

A. Recipient Activities

1. Select Community or Health Facility Focus and Define Pathogens of Interest

Identify whether the primary focus of activities will be on decreasing spread

of resistance among community-or health-care-associated pathogens and define the pathogen/resistance patterns that will be evaluated in the project.

2. Select Study Population

Identify a population of adequate size for study purposes.

a. If the primary focus of the application is to address antimicrobial resistance in community settings, the population should be defined by a geographic area and should include a variety of health-care providers and health-care provider organizations. (One example of an appropriate approach would be to define the population to be addressed as metropolitan area or part of a State in which case the project might involve, at a minimum, public health entities and providers of outpatient health care in this area.)

b. If the primary focus of the application is on integrated health care delivery systems or networks, the population should be defined such that interventions could be conducted in multiple settings in which antimicrobial resistance among the target pathogens can develop or be spread (for example, inpatient hospital settings, emergency rooms, ambulatory care facilities, home health settings, long term care facilities, etc.). One example of an appropriate approach would be to define the population as those receiving hospital, long-term care services, and ambulatory care services through a network of related organizations, in which case the project might involve the targeted health facilities, as well as public health authorities in the area.

3. Define, Collect, and Analyze Baseline Data

Collect baseline data so that evaluation of the interventions can be done. This includes, at a minimum, collecting incidence and/or prevalence data on antimicrobial resistance among the target pathogens and measuring indicators of prescribing practices of providers serving the population under study.

4. Design and Implement an Intervention Promoting Judicious Antimicrobial Use and Other Approaches to Reducing Antimicrobial Resistance

It is anticipated that this will involve developing coalitions among public health agencies, health-care providers, professional societies, and others, as well as implementing specific strategies. These strategies may include peer education of physicians, public education campaigns, clinical practice guidelines, formulary guidelines, prescribing restrictions, pre-admission and pre-discharge screening and the implementation of admission and discharge guidelines, cohorting, barrier precautions, isolation precautions, and other strategies which are likely to be efficacious. The choice of strategies should be justified based on the nature of the study population and the structure of the health care delivery system(s) within which the study population receives health care.

5. Measure Effect of the Intervention

a. Measure the change in rates of antimicrobial resistance of the organisms over time. Changes in rates of resistance among organisms that are carried (*e.g.*, in the nasopharynx) may be evaluated in addition to changes in rates of resistant infections. Measurement of antimicrobial resistance should be by a laboratory with proven ability to do these measurements well.

b. As decreases in resistance as a result of the program may take several months to years to manifest themselves, measure outcomes related to how well the interventions have been implemented and whether they have resulted in behavior change.

c. Measure cost implications of the intervention. This should include impact of the intervention on direct costs (*e.g.*, costs of antibiotics, medical care visits, duration of hospitalization, etc.) and indirect costs (*e.g.*, time lost from work or child care). Costs should be differentiated from charges, and the perspective of the costs should be defined (*e.g.*, societal, payer, patient, provider). Costs of the intervention program must be differentiated from those of the evaluation.

d. Other possible outcomes that could be measured include changes in parent or provider knowledge and attitudes regarding antimicrobial use.

6. Disseminate Research Findings

Disseminate research results by appropriate methods such as publication in journals, presentation at meetings, conferences, etc.

B. CDC Activities

CDC will provide technical assistance in the design and conduct of the research. This may include:

1. Provide technical assistance in the design and conduct of the project, including intervention methods and analytic approach.

2. Upon recipient's request, perform selected laboratory tests as appropriate.

3. Participate in data management, the analysis of research data, and the interpretation and dissemination of research findings as appropriate.

4. Assist in the design of the evaluation, in particular, in the identification of outcome measures that will allow for later analysis of economic benefits.

5. Provide educational materials, including working with grantees to develop new materials that might be needed at multiple sites.

6. Facilitate exchange of information between recipients.

Technical Reporting Requirements

Narrative progress reports are required semiannually. The first semiannual report is required with each year's noncompeting continuation application and should cover program activities from date of the previous report (or date of award for reporting in the first year of the project). The second semiannual report is due 90 days after the end of each budget period and should cover activities from the date of previous report. Progress reports should address the status of progress toward specific project objectives and should include copies of any publications resulting from the project.

An original and two copies of a Financial Status Report (FSR) are required no later than 90 days after the end of each budget period. A final performance report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC.

Application

1. Pre-application Letter of Intent

In order to assist CDC in planning and executing the evaluation of applications submitted under this program announcement, all parties intending to submit application(s) are requested to submit a non-binding letter of intent. Notification should be provided as soon as possible but not later than 30 business days prior to the application due date. Notification should include: (1) Name and address of institution, (2) name, address, and telephone number of contact person, and (3) whether the application will primarily address community-based interventions or interventions in integrated health care delivery systems. Notification can be provided by facsimile, postal mail, or electronic mail (E-mail) to Suzanne Binder, M.D., National Center for Infectious Diseases, Mailstop F–22, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Facsimile (770) 488–7794, Internet scb1@cdc.gov.

2. Application Content

Applicants are required to submit an original and two copies of the

application and must develop their application in accordance with the PHS Form 5161–1 (Revised 7/92, OMB Control number 0937–0189), information contained in this program announcement, and the instructions outlined below. In order to ensure an objective, impartial, and prompt review, applications which do not conform to these instructions may be disqualified.

All pages must be clearly numbered, and a complete index to the application and its appendixes must be included. The application must be submitted unstapled and unbound. Bound materials (e.g., pamphlets, booklets, etc.) will not be accepted in the narrative or appendices. To submit such materials, copy them onto 8½″ x 11″ white paper, one-side only. All materials must be typewritten, single spaced, and in unreduced type (no smaller than font size 12) with at least 1″ margins, headers, and footers.

The application narrative must not exceed 20 pages (excluding budget and appendixes). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below.

a. Abstract

Provide a brief (two pages maximum) abstract of the project. State the length of the project period for which assistance is being requested (see AVAILABILITY OF FUNDS Section for additional information regarding project period). Indicate clearly whether this project primarily addresses antimicrobial resistance in communities or in integrated health-care networks.

b. Background and Need

Discuss the background and need for the proposed project. Illustrate and justify the need for the proposed project that is consistent with the purpose and objectives of this cooperative agreement program.

c. Capacity and Personnel

Describe applicant's past experience in conducting projects/studies similar to that being proposed. Describe applicant's resources, laboratory and other facilities, and professional personnel that will be involved in conducting the project. Include in an appendix curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources that will be assigned to the project. Provide in an appendix letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. (Do not include letters of support from CDC personnel—they will not be accepted in the application.)

d. Objectives and Technical Approach

Describe specific objectives for the proposed project which are measurable and time-phased and are consistent with the purpose and goals of this cooperative agreement program. Include a detailed timeline for completion of key activities. Provide a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all recipient activities. Include a clear description of applicant's technical approach/methods which are directly relevant to the study objectives. Clearly identify specific assigned responsibilities/tasks for all key professional personnel. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project. If the applicant is not a health department, describe plans for involving local and State health departments. Clearly describe the population to be studied. Describe in detail a plan for evaluating study results (including how data on prescribing practices, costs, and charges will be obtained) and for evaluating progress toward achieving project objectives. Justify the choice of organisms and antimicrobial susceptibility that will be used for evaluation, and include a description about how quality of laboratory measurements will be assured. Clearly state the proposed length of the project period.

e. Budget

Provide in an appendix a budget and accompanying detailed justification for the first year of the project that is consistent with the purpose and objectives of this program. Provide estimated total budgets for subsequent years. If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation). (See sample budget included in application package.)

Note: If indirect costs are requested, a copy of the applicant organization's current negotiated Federal indirect cost rate agreement or cost allocation plan must be provided.

f. Human Subjects

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe in an appendix adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects (see OTHER REQUIREMENTS Section for additional information).

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 points): Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program. Extent to which applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this program.

2. Capacity (30 points total):

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. This includes the capacity to conduct quality laboratory measurements. (10 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research and programs related to that proposed as evidenced by curriculum vitae, publications, etc. (15 points)

c. Extent to which applicant includes letters of support from non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate as described in the operational plan. (5 points)

3. Objectives and Technical Approach (60 points total):

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this program and which are measurable and time-phased. (10 points)

b. Extent to which the applicant identifies an appropriate population for study, including whether the results of a study in this population will be generalizable to other populations in the U.S. Extent to which adequate procedures are described for the protection of human subjects. Extent to

which the applicant identifies microbes/resistance patterns for study that are of public health importance. (10 points)

c. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all recipient activities. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for developing and conducting the proposed program and evaluation and extent to which the plan is adequate to accomplish the study objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. The extent to which applicant describes the existence of or plans to establish partnerships. (20 points)

d. Extent to which applicant describes adequate and appropriate collaboration with CDC and/or others during various phases of the project. (10 points)

e. Extent to which applicant provides a detailed and adequate plan for evaluating study results (including laboratory data and data on prescribing practices), as well as plans for evaluating progress toward achieving project objectives. (10 points)

4. Budget (not scored): Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 Review, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control number 0937–0189), must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, Mailstop E–18, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before June 29, 1998.

1. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. (Please refer to Announcement Number 98039.) You will receive a complete program description, information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 314, Mailstop E–18, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 842–6546, Facsimile (404) 842–6513, Internet oxb3@cdc.gov.

Programmatic technical assistance may be obtained from David Bell, telephone (404) 639–2603 or Suzanne Binder, M.D., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop F–22, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488–7793, Facsimile (770) 488–7794, Internet scb1@cdc.gov.

Please refer to Announcement Number 98039 when requesting information regarding this program.

You may obtain this announcement from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402–9325, telephone: (202) 512–1800.

Dated: May 4, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–12236 Filed 5–7–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Program Announcement 98056]

Mining Occupational Safety and Health Research Grants; Availability of Funds for FY 1998

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of fiscal year (FY) 1998 funds for a research grant program for Mining Occupational Safety and Health Research Grants. This program addresses the ''Healthy People 2000'' priority area of Occupational Safety and Health. The purpose of the program is to develop knowledge that can be used to prevent occupational diseases and injuries to miners. NIOSH will support hypothesis-testing research projects to identify and quantify occupational health and safety hazards to miners, develop methods and technologies to measure and control these hazards, and translate research findings so that they can be applied to solve health and safety problems in mines.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $700,000 is expected to be available in FY 1998 to fund 4–8 research project grants. This money is in addition to the funds available for the previous RFA 807 announced in August 1997. Organizations that submitted applications for RFA 807 may revise and resubmit under this announcement. The amount of funding available may vary and is subject to change. Awards will range from $50,000 to $200,000 in total costs (direct and indirect) per year. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 3 years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interest

The Mine Safety and Health Research Program has been fully coordinated with the National Occupational Research Agenda (NORA) plans and recommendations. The NORA document is available through the NIOSH homepage at http://www.cdc.gov/niosh/nora.html. The focus of grants should emphasize research in the following topical areas which are in priority order:

(1) Hearing Loss Prevention

Conduct laboratory and field research on noise-induced hearing loss in miners; Conduct field dosimetric and audiometric surveys to assess the extent and severity of the problem and to identify those mining segments in greatest need of attention and to objectively track progress in meeting loss prevention goals; Conduct field and laboratory research to identify noise generation sources and to identify those areas most amenable to intervention activities; Develop, test, and demonstrate new control technologies for noise reduction; Develop strategies and methods to improve the effectiveness of hearing protectors for miners; Assess the effect of using hearing protectors on miner safety; Evaluate technical and economic feasibility of controls; Develop, evaluate, and recommend implementation strategies to promote the adoption and use of noise reduction technology.

(2) Mining Injury Prevention

Conduct laboratory, field, and computer modeling research to focus on human physiological capabilities and limitations and their interactions with mining jobs, tasks, equipment and the mine work environment; Research on causes and prevention of low back disorders, slips and falls, and materials handling injuries in miners; Study effects of human behavior on mining injuries; Design and conduct epidemiological research studies to identify and classify risk factors that are causing or may be causing traumatic injuries to miners; Evaluate and recommend implementation strategies for injury prevention and control technologies; Research to improve response to mine emergencies, and to enhance the effectiveness of mine rescue teams; Identify and evaluate research opportunities using a systems approach for intervention and prevention; and Develop cost analysis methodologies to evaluate performance and engineering control strategies.

(3) Dust and Toxic Substance Control

Research to develop or improve personal and area direct reading instruments for measuring mining contaminants, including but not limited to respirable dust, silica, diesel engine emissions, and other toxic substances and mixtures; Conduct field tests, experiments, and demonstrations of new technology for monitoring and assessing mine air quality; Conduct laboratory and field research to develop airborne hazard reduction control technologies; Carry out field surveys in mines to identify work organization strategies that could result in reduced dust or toxic substance exposure; Evaluate the performance, economics, and technical feasibility of engineering control strategies, novel approaches, and the application of new or emerging technologies for underground and surface mine dust and toxic substance control systems; Develop and evaluate implementation strategies for using newly developed monitors and control technology for exposure reduction or prevention.

(4) Social and Economic Consequences of Mining Illness and Injury

Analyze all effects of mining illness and injury on miners, their families, communities and States; Assess the effectiveness of health services provided to miners for prevention and care of occupational illness and injury; Assess the economic burden of mining illnesses and injuries and potential economic benefits of their prevention.

(5) Surveillance

Develop and evaluate new surveillance methods for mining-related illnesses and fatal and nonfatal injuries to improve collection and analysis of

health and safety data; Collect demographic information on miners to analyze health and safety data; Develop improved methods to describe trends in incidence of mining-related fatalities, morbidity, and traumatic injury; Develop and evaluate methods to conduct surveillance on the use of new and emerging technologies, the use of engineering controls, and the use of protective equipment in the mining sector; Analyze the effectiveness of prevention and control interventions in mining; Conduct mining-relevant risk analyses.

E. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

The Letter of Intent must be submitted on or before June 1, 1998, to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98056, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, Georgia 30305–2209.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before June 25, 1998, submit the application to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98056, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

F. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed for scientific and technical merit by an initial review group and will be determined to be competitive or non-competitive, based on the review criteria relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified.

Applications judged to be competitive will be discussed and assigned a priority score. Following initial review for technical merit, the applications will receive a secondary review for programmatic importance.

Review Criteria for Technical Merit Are as Follows

1. Significance—Does this study address an important problem related to the topical research issues outlined in this solicitation? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

2. Approach—Are the conceptual framework, design (including composition of study population), methods, and analyses adequately developed, well-integrated and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative approaches?

3. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies.

4. Principal Investigator—Is the investigator appropriately trained and well suited to carry out this work (particularly but not exclusively) in the area of the proposed project? Is the work proposed appropriate to the experience level of the principal investigator and other researchers, if any?

5. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there documentation of cooperation from industry, unions, or other participants in the project, where applicable? Is there evidence of institutional support and availability of resources necessary to perform the project?

6. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects?

7. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations (see ''Other Requirements'').

8. Vertebrate animals—Are the procedures proposed adequate for the welfare of vertebrate animals and are they fully documented? Are all procedures in compliance with applicable published regulations?

9. Budget—Is the budget reasonable and appropriate for all direct costs and period/s of requested support and are all entries adequately justified?

Review Criteria for Programmatic Importance Are as Follows

1. Relevance to mine safety and health, by contributing to achievement of research objectives specified in Section 501 of the Federal Mine Safety and Health Act of 1977.

2. Magnitude of the problem in terms of numbers of miners affected.

3. Severity of the disease or injury in the mining population.

4. Usefulness to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards in mines on a national or regional basis.

The Following Will Be Considered in Making Funding Decisions

1. Technical merit of the proposed project as determined by the initial peer review.

2. Programmatic importance of the project as determined by secondary review.

3. Availability of funds.

4. Program balance among priority areas of the announcement.

G. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Progress reports (annual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (in the application kit).

AR98–1—Human Subjects Requirements
AR98–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–3—Animal Subjects Requirements
AR98–10—Smoke-Free Workplace Requirements
AR98–11—Healthy People 2000
AR98–12—Lobbying Restrictions

H. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended and the Federal Mine Safety and Health Act of 1977, section 501 (30 U.S.C. 951) as amended. The Catalog of Federal Domestic Assistance number is 93.262.

I. Where To Obtain Additional Information

Please refer to Program Announcement 98056 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98056, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209, telephone (404) 842–6535, Email address: jcw6@cdc.gov.

For program technical assistance, contact: Roy M. Fleming, Sc.D., Research Grants Program, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, M/S D–30, Atlanta, GA 30333, Telephone: (404) 639–3343, FAX: (404) 639–4616, Internet: rmf2@cdc.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Also, this and other CDC Announcements can be found on the CDC homepage on the Internet,(http://www.cdc.gov) under the ''Funding'' section, as well as on the NIOSH homepage (http://www.cdc.gov/niosh under ''Extramural Program.'' For your convenience, you may be able to retrieve a copy of the PHS Form 398 from (http://www.nih.gov/grants/funding/phs398/phs398.html).

Please Refer to Announcement Number 98056 when Requesting Information and Submitting an Application.

Dated: May 1, 1998.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–12212 Filed 5–7–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCSE 98SIP–1]

Child Support Enforcement Demonstration and Special Projects—Special Improvement Projects

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Notice.

SUMMARY: The OCSE invites eligible applicants to submit competitive grant applications for special improvement projects which further the national child support mission, vision, and goals as outlined in the CSE Strategic Plan with Outcome Measures for Fiscal Years 1995–1999. A copy of the CSE Strategic Plan may be obtain upon request (See **ADDRESSES** of this announcement). Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is July 7, 1998. See Part IV of this announcement for more information on submitting applications.

ADDRESSES: Application kits containing the necessary forms and instructions to apply for a grant under this program announcement and the CSE Strategic Plan are available from: Administration for Children and Families, Office of Child Support Enforcement, Office of Automation and Special Projects, 370 L'Enfant Promenade, SW, 4th Floor, West Wing, Washington, DC 20447, Attention: Jay Adams, (202) 401–9240, ljadams@ACF.DHHS.GOV, or (202) 401–5539 (FAX).

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), OCSE, Susan A. Greenblatt at (202) 401–4849, for specific program concerns regarding the announcement.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, and CFDA Number.

Part II: Project and Applicant Eligibility—project priorities, project considerations, eligible applicants, and project and budget periods.

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review, and funding reconsideration.

Part IV: The Application—application materials, application development, and application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139 Expiration date 10/31/00).

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.

Part I. Background

A. Program Purpose and Objectives

To fund a number of special improvement projects which further the national child support mission, vision and goals as outlined in the Office of Child Support Enforcement Plan (1995–1999). Thus, proposed projects should further the accomplishment of national

goals: i.e. all children to have parentage established; all children in IV–D cases to have financial and medical support orders; and all children to receive financial and medical support. Specifically, we are looking for grants which will further OCSE's FY 1998 priorities to increase collections, support orders and paternities.

The OCSE is committed to helping States make measurable program improvements that will enhance the lives of children.

Special improvement projects undertaken for this announcement should be in furtherance of efforts under the Government Performance and Results Act (i.e. designing a performance based program), the goals of the national child support strategic plan stated above and advancing the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

B. Legislative Authority

Section 452(j), 42 U.S.C. 652(j) of the Social Security Act provides Federal funds for technical assistance, information dissemination and training of Federal and State staff, research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

C. Availability of Funds

Approximately $1.3 million is available for FY 1998. In order to fund a wide variety of projects, we plan to fund small to medium projects (e.g., $30,000—$150,000); however, we will consider higher amounts if the merit and benefits of the project are exceptional. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required.

D. CFDA Number:

93.601—Child Support Enforcement Demonstrations and Special Projects.

Part II. Applicant and Project Eligibility

A. Eligible Applicants

Eligible applicants for these special improvement project grants are State (including Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV–D agencies), Tribes and Tribal Organizations, local public agencies (including IV–D agencies), nonprofit organizations, and consortia of State and/or local public agencies. The Federal OCSE will provide the State CSE agency the opportunity to comment on the merit of local CSE agency applications before final award. Given that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV–D agencies to operate these projects.

Preferences will be given to applicants representing CSE agencies and applicant organizations which have cooperative agreements with CSE agencies. All applications developed jointly by more than one agency organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award. Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

B. Project Priorities

Eligible applicants should describe how the special improvement project will:

- Improve the effectiveness of Federal programs by promoting a new focus on results, service quality, management/organizational innovations, or public satisfaction;
- Significantly further national OCSE priorities as outlined in the OCSE Strategic Plan (1995–1999), i.e., all children to have parentage established; all children in IV–D cases to have financial and medical orders; and all children to receive financial and medical support;
- Improve effectiveness of the child support program by achieving project outcomes/results that further national goals and are transferable to other states/entities;
- Build on existing partnership agreements between State Child Support agencies and Federal Regional Offices or cooperative agreements between State Child Support agencies and Tribes.

C. Project Considerations

In order to successfully compete under this announcement, the applicants should:

- Provide a description of the project and how it will change/impact the current operations of the Child Support Enforcement Program in the area(s) affected by this grant project;
- Provide a detailed description of what program improvement/innovations will be addressed. This should include an assessment of the current situation and how this project will address a problem area(s) and improve program results. Within the context of program improvement, applicants shall provide information on the extent of the problem and the environment in which they operate, e.g., number of cases affected, specific locality affected; and impact analysis, e.g., who/what is affected by the problem and impact on performance. Under this announcement, an applicant may undertake initiatives to improve performance in a wide variety of areas. We are looking for projects which will increase program effectiveness and achieve measurable results in child support enforcement collections, orders established and paternities acknowledged;
- Identify necessary qualifications for any consultants or contractors who would be used;
- Provide a detailed budget for the project. The staff required, equipment and facilities that would be leased or purchased, a detailed explanation of costs needed to accomplish all major project tasks. Grant funds cannot be used for capital improvements or the purchase of land or buildings;
- Explain why this project's resource requirements cannot be met by the state/local agency's regular program operating budget;
- Provide a management and staffing plan for the project undertaken under this announcement. The plan should outline the goals/objectives and tasks to be accomplished by the project. Project methodology should logically outline the goals and tasks to be accomplished;
- Provide for an assessment strategy for determining overall project effectiveness relating to proposed outcomes/results. We are asking for: (a) Criteria against which a project's success can be measured, (b) a mechanism to make that assessment, and (c) clearly documented results. See Part III, The Review Process, (C. Competitive Review and Evaluation Criteria (3) Criterion III: Project Effectiveness) of this announcement for more information on an assessment strategy for determining overall project effectiveness relating to proposed outcomes/results.

D. Project and Budget Periods

Generally, project and budget periods for these projects will be up to 17 months. However, OCSE will consider projects up to 36 months, if unique circumstances warrant.

If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or ''budget periods.'' Funding beyond the first 12-month budget period is not guaranteed. Rather, future funding will depend on the grantee's satisfactory performance and the availability of future appropriations.

Part III: The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory Participation in the Intergovernmental Review Process does not Signify Applicant Eligibilty for Financial Assistance Under a Program. A Potential Applicant Must Meet the Eligibility Requirements of the Program for Which it is Applying Prior to Submitting an Application to its Single Point of Contact (SPOC), if Applicable, or to ACF.

As of May 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs.

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W, Mail Stop 6C–462, Washington, D.C. 20447. A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

(1) Criterion I: Understanding and Analysis of the Problem (Maximum 25 points)

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project and the importance of addressing these in improving the effectiveness of the child support program. Applicants should include a discussion of the child support program as it currently operates including its strengths and weaknesses regarding the area(s) addressed by the project. The applicant should describe how the project will address these problem(s) through implementation of changes, enhancements and innovative efforts.

(2) Criterion II: Project Plan and Project Staffing (Maximum: 30 points)

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes time-lines and detailed budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify what tasks are required of any contractors.

Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that the staff positions needed to operate the project are filled or will be filled in a reasonable time.

(3) Criterion III: Project Effectiveness (Maximum: 30 points)

The applicant should identify the specific goals and objectives of the project; describe the cost effective methods which will be used to achieve these goals; the specific results/products that will be achieved; and how the success of this project has broader application in furthering national child support initiatives and/or providing solutions that could be adapted by other states/jurisdictions. A discussion of data availability and outcome measures to be used should be included. Describe the collection and reporting system to be used.

(4) Criterion IV: Reasonable Costs (Maximum 10 points)

The project costs are reasonable in relation to the identified tasks. All agency and other resources (i.e., state, community, other programs—TANF/Head Start) that will be committed to the project should be given in detail.

(5) Criterion V: Preferences (Maximum 5 points)

Preference will be given to those grant applicants representing IV–D agencies and applicant organizations who have cooperative agreements with IV–D agencies.

D. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement. The length of the application, including the application forms and all attachments, should not exceed 20 pages. A page is a single-side of an 8½ × 11″ sheet of plain white paper. The narrative should be typed double-spaced on a single-side of an 8½″ × 11″ plain white paper, with 1'' margins on all sides. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process. Each page of the application will be counted to determine the total length.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late and will not be considered in the competition.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Lois Hodge, 370 L'Enfant Promenade, SW, Mail Stop 6C–462, Washington, DC 20447. Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant will be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Lois Hodge''. ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Dated: May 4, 1998.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 98–12215 Filed 5–7–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Availability of Funding for Alternative Projects for the Provision of Comprehensive Refugee Resettlement Services, Including Interim Financial Assistance, Social Services and Case Management for Newly Arriving Refugees

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

ACTION: Request for applications for alternative projects for the provision of comprehensive refugee resettlement services, including interim financial assistance, social services and case management for newly arriving refugees.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF) announces that competing applications will be accepted for new grants pursuant to the Director's discretionary authority under section 412(c)(1)(A) of the Immigration and Nationality Act (INA) and pursuant to the Secretary's authority under section 412(e)(7) of the INA for alternative projects, as amended by section 311 of the Refugee Act of 1980 (Pub. L. 96–212), 8 U.S.C. 1522(c); 8 U.S.C. 1522(e)(7); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above; and the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605).

This announcement offers applicants the opportunity to implement alternative projects to test the feasibility of providing comprehensive resettlement services to newly arriving refugees [1] under a public/private-sector

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status'', eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422; (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is

Continued

partnership among States and national and local voluntary agencies responsible for reception and placement services to refugees. Funding is available to these projects under both the ''Wilson/Fish'' authority and ORR's discretionary social services program.

DATES: The closing date for submission of applications is August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Carmel Clay-Thompson, Director, Division of Community Resettlement, (202) 401–4557.

SUPPLEMENTARY INFORMATION: All newly arrived refugees, regardless of family size, are eligible for these programs. Projects should be designed to meet their needs in a manner that promotes complementary services, coordination between assistance and services, culturally and linguistically appropriate service delivery, and emphasizes employment and the needs of the refugee family as a unit. The services should be cost-effective by promoting welfare avoidance and by enhancing refugees' prospects for early economic and social self-sufficiency.

Effective projects will demonstrate (1) close linkage in the delivery of financial assistance and employment services; and (2) successful resettlement along the key indicators of labor force participation, per capita and household income, English language acquisition, car ownership, and reductions in refugee reliance on public assistance.

Alternative projects are to provide interim financial assistance as needed to newly arrived refugees who might otherwise be deemed eligible for either the Temporary Assistance for Needy Families (TANF) Program or the Refugee Cash Assistance (RCA) Program. Federal reimbursement of the costs of cash assistance are available through CMA appropriated funds for a period not to exceed the eighth month (although funds are not available for the first month of Reception and Placement) after a refugee's date of entry into the U.S.

Consistent with section 412 (e)(7)(B) of the INA, refugees in projects funded under this announcement will be precluded from receiving cash assistance under the TANF program or the RCA Program.

Alternative options for medical care are not available under this announcement. Participating refugees will retain eligibility for medical coverage under the Refugee Medical Assistance (RMA) program or under Medicaid, Title XIX of the Social Security Act.

Applicants may apply for discretionary funds in proportion to the number of refugee participants in the project, for the purpose of establishing or enhancing existing refugee-specific employment services.

Funds will be awarded under a cooperative agreement.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576.

This Program Announcement consists of four parts:

Part I covers information on available funds, legislative authorities, eligible applicants, definition of terms used in the Program Announcement, the purpose and scope of the program and types of projects to be considered, details on project and budget periods, cost sharing, restrictions on funds, third-party evaluation, and application content.

Part II provides general instructions for preparing a full project description.

Part III describes the review criteria used in the assessment of applications.

Part IV describes the application procedures, the availability of forms, where and how to submit an application, instructions for completing the SF–424 and the intergovernmental review.

Part I—General Information

Availability of Funds

Approximately $4,000,000 is available under this announcement in discretionary social service funds, to be used for refugee-specific employment and case management services, as well as the administrative costs of the projects. ORR anticipates making 4–6 individual grant awards in amounts up to $1,000,000 each for these costs. Requests for discretionary funds should be justified in proportion to the size of the population enrolled in the project.

Successful applicants will also be eligible to receive reimbursement of costs for interim support and related administrative costs from ORR's CMA appropriations. The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

In order to be considered for funding under this Announcement, applicants must submit a request which includes:

(a) Reimbursement of cash assistance and related administrative costs incurred by the applicant for refugees participating in the project. This request should be substantially equivalent to the level of funds the project's participating population would otherwise receive during the designated eight-month budget period under the publicly supported program of assistance (TANF or RCA) for which they would otherwise be eligible. Thus, the TANF payment rate should be the basis for computing payments for TANF-type participants. The RCA payment rate should be the basis for computing payments for RCA-type participants.

(b) A request for social services discretionary funding for enhanced, refugee-specific services for refugees who have been targeted for inclusion in this alternative project. Requests for services funding should be proportional to the size of the participating eligible population of new arrivals.

Legislative Authority

Section 412(c)(1)(A) of the INA authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.''

Projects are also authorized by section 412(e)(7) of the Immigration and Nationality Act, 8 U.S.C. 1522(e)(7) which states: ''The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.''

Eligible Applicants

Eligible applicants are those agencies of State government that are responsible for the refugee program under 45 CFR 400.5 as well as private, non-profit voluntary agencies under agreement

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used in this notice to encompass all such eligible persons unless the specific context indicates otherwise. Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

with the Department of State, Bureau of Population, Refugees, and Migration to conduct the reception and placement program for refugees.

Definition of Terms

Eligible refugee participants: All newly arrived refugees in the designated State or local jurisdiction, whether they are primary or secondary migrants to that area. Refugees who for reasons of age or disability may be eligible for SSI are ineligible for participation in these projects. Income and asset disregards may be used in determining continuing eligibility for these projects.

Interim Support: To provide financial assistance adequate to meet the subsistence needs of refugees otherwise eligible for RCA and/or TANF and to preclude the need to access public cash assistance during the first eight months following arrival in the U.S.

Interim support includes provision of financial assistance, as necessary, for up to eight months. This assistance may be in the form of cash, an income floor, a grant diversion, financial bonuses or incentives, payment for work-related expenses, income disregards, or other ''Make Work Pay'' incentives for early employment.

Financial assistance shall not begin under the grant before the 31st day after the refugee's arrival.

During the second through the eighth month, the alternative program must provide interim support in amounts substantially equivalent to the State's established payment under the RCA or TANF program, as appropriate, adjusted for the size of the family unit, for a period not to exceed the eight month following U.S. arrival, or earlier, if the refugee case as a whole is receiving wages sufficient to render interim support unnecessary.

Refugee-Specific Services: Services which are designed specifically to meet refugee needs, such as employment, English language training, cultural orientation, and social adjustment, and are conducted in a linguistically and culturally appropriate manner, in keeping with the objectives of the refugee program.

Purpose and Scope

The purpose of this announcement is to enable applicants to implement alternative projects to provide interim financial assistance, support services and case management to refugees in a manner that encourages self-sufficiency, reduces the likelihood of welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. ORR's intent is to encourage applicants to serve all newly arriving refugees in their jurisdiction, regardless of family composition and regardless of the program of cash assistance (RCA or TANF) for which they would otherwise be eligible, in a refugee-specific program of interim cash assistance and services. Refugees who apply and are found eligible for SSI will not be eligible for these projects.

These awards are intended to help refugees attain self-sufficiency within eight months after arrival in the U.S., without access to public cash assistance.

Applicants may submit a single application which proposes funding on a State-wide basis or which proposes an alternative project for refugees arriving in one or more communities or localities.

Cash assistance funding may be requested for a period not to exceed seven months (excluding the first month of Reception and Placement) following the arrival of refugees otherwise eligible for the RCA or TANF program.

Applicant must ensure that the target population is afforded all safeguards specified in section 412 (e) of the INA and other applicable law including but not limited to: Application of eligibility criteria, administrative procedures, fair hearings, and appeals of adverse decisions. Applicants must also ensure that all relevant statutory conditions and prohibitions are applied to the target population.

Use of Funds

Applicants may request discretionary funds under this announcement to enhance their ability to provide refugee-specific employment services to this population. The discretionary funds may be used in the following ways: Job development, placement, and post-placement services, on-the-job training, legally established employer or employee incentives, post-placement services, competency-based English language training, case management and related administrative overhead. Short-term skills training may be provided with these funds only to the extent that such training is consistent with industry standards and leads directly to a specific job.

To be considered, applicants must apply on behalf of all newly arriving refugees in the designated jurisdiction or service area who are otherwise eligible for the specific assistance category(ies) for which this project is an alternative.

Types of Projects To Be Considered for Funding

Projects are encouraged where refugees are adversely affected by changes brought about under welfare reform. Programs are also encouraged where there is an interest in restructuring the refugee program for new arrivals to produce comprehensive service delivery, coordinated among publicly and privately supported agencies, for assisting refugees in achieving economic and social self-sufficiency.

Circumstances where an alternative project may be appropriate include the following examples:

Where States are having difficulty maintaining RCA in new welfare systems and wish to find alternative resettlement methods.

Where TANF refugees may not have access to culturally and linguistically appropriate services.

Where refugees, particularly two-parent families, are in danger of dependency on public assistance.

Where a transition period of additional financial resources is needed for refugee-specific services which are not funded under ORR's formula allocations.

Where continuity of services from time of arrival through attainment of self-sufficiency needs to be strengthened.

Applicants may establish alternative programs in various ways: some options include:

The State government separates the refugee program from the public welfare system and transfers its implementation to one or more voluntary resettlement agencies, under the mechanism of a subgrant or subcontract.

The State government, in partnership with national and local networks of voluntary agencies, privatizes both the operations and service delivery of refugee interim support and services.

The State government transfers responsibility for the administration of the program to a national voluntary agency or consortium of several voluntary agencies.

National and local voluntary resettlement agencies form a consortium to operate a comprehensive resettlement program that is an alternative to public welfare.

Project and Budget Periods

Under this announcement the Director solicits applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period; applications for continuation grants funded under these awards beyond the one-year budget period may be entertained on a non-competitive basis, subject to the availability of funds, satisfactory progress of the project, and a

determination that continuation would be in the best interest of the government.

Cost Sharing

States are encouraged to share the costs of interim support in this program by contributing a share of funds—either Federal or State TANF assistance for TANF-eligible refugees in the project or State (non-TANF) funds which, subject to the necessary conditions, may be counted towards the State's maintenance of effort requirement—in proportion to the targeted TANF-type population in this demonstration, that would have been expended in their behalf in the absence of this alternative project.

Restrictions

Refugees covered under an alternative program are precluded from receiving cash assistance under TANF and/or RCA, for which this project is an alternative, during the first eight months following their arrival in the U.S.

Third-Party Evaluation

An independent evaluation of each project funded under this announcement will be conducted by ORR. For this purpose, successful grantees will be expected to maintain and provide access to appropriate client-specific data on date of arrival, family size, age, gender, employment, job retention, financial assistance provided, and other key indicators of successful resettlement, as well as on service delivery and program implementation. Grantees will be strongly encouraged to evaluate project effectiveness through feedback provided by participants after completing the program.

Part II—General Instructions for Preparing a Project Description

General Instructions

Cross-referencing should be used rather than repetition. ORR is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Applicants shall prepare the project description statement in accordance with the following instructions.

A. Project Summary/Abstract

Provide a summary of the project description with reference to the funding request. ORR is also interested in the following:

- The total number of refugees to be served when the program is fully operational.
- The total ORR funds requested for a 12 month period when the project is fully operational.
- The amount and source of any additional funding that will help support the project.
- The community to be served (name of county(ies) or State).
- The type of program option(s) proposed (for TANF-type refugees if included with RCA-type refugees) and the proposed services.
- The target date for beginning full services to newly arrived refugees.

B. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

ORR is particularly interested in the following:

1. Describe the problem in the current resettlement situation to be addressed by the alternative project with respect to:

(a) Refugee welfare utilization data, by category of assistance, duration, and the reasons, if applicable, for high utilization in the refugee community; (b) barriers to, and the need for, coordination among public and private refugee agencies; (c) current employment and other program strategies and outcomes; (d) refugees' access to entry-level employment through culturally and linguistically appropriate services; (e) confusion among refugees regarding the purpose of public welfare and the employment services available within the community.

2. State the rationale for this alternative project relative to welfare reform and justify the proposed strategy intended to reduce welfare dependency, promote employment, and foster coordination among resettlement agencies and service providers. Discuss the proposed project's anticipated cost effectiveness.

C. Results or Benefits Expected

Identify the results and benefits to be derived. Describe proposed program outcomes, in terms of appropriate indicators, including GPRA measures currently in use in the refugee resettlement program. Include the plan for measuring progress along these indicators: e.g., welfare avoidance and/or reduction, numbers of refugees who retain employment for a designated period of time, number of single refugees and refugee families who attain self-sufficiency.

Describe data collection and analyses anticipated to document project implementation and outcomes. Describe the plan and schedule for project monitoring. Successful applicants will also be required to report outcomes on ORR's standard Quarterly Performance Report.

D. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served.

ORR is particularly interested in the following:

1. Describe (a) The target population (numbers, ethnicity, and demographic characteristics) (b) anticipated refugee welfare utilization by the category of public assistance for which the targeted population may otherwise be eligible;

2. Financial assistance (e.g., eligibility criteria, payment standards, administrative procedures, etc.) Include a description of levels of support and all other incentives or cash mechanisms for providing interim support; measures to

ensure fair and equitable access to financial support, provisions for sanctions for non-cooperation and for fair hearings and appeals.

3. Discuss how refugees in this project will have eligibility for, and access to, other programs, specifically, Refugee Medical Assistance or Medicaid, the Children's Health Insurance Program (CHIP), Food Stamps, expanded medical coverage under OBRA, etc.

4. Describe how the alternative project will provide interim cash assistance and support services of case management and employment in a manner that is coordinated and that promotes self-sufficiency and reduces welfare dependency.

a. Demonstrate how the services of the project will be coordinated among resettlement agencies and service providers, including voluntary resettlement agencies, Mutual Assistance Associations, and other public and private, non-profit agencies that provide services to refugees. Provide letters of agreement, if available.

b. An integrated system of assistance and services is considered an essential characteristic of an alternative project. Describe how this integration will be effected in this project.

5. Provide a description with documentation of consultation with the State Refugee Coordinator, if applicant is a private, non-profit agency; and with appropriate national voluntary agencies, if applicant is a State government.

6. Where the application is for a State-wide project, describe how the proposed project will address any element of the current program which the new project would include, replace, interrelate with, or otherwise impact.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a ''collection of information'' that is ''conducted or sponsored'' by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

F. Additional Information

1. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

ORR is also interested in the following:

Describe the organization's plan for administering and managing the project. Describe the location of the project in the structure of the agency and include position descriptions, qualifications, and names of key project staff. Describe plans and qualification for training and on-going technical assistance.

2. Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

G. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form, e.g., cash assistance, employment and other services, case management, and administrative costs by program activity. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

ORR is also interested in the following:

Provide a client-loading chart and related budget (samples are available from ORR.) Use the costs of the current program for the most recent 12 month period, including numbers of refugees served and unit costs of services, to project your budget. Include the anticipated arrival rates of refugees into the community by probable category of public assistance for which they would otherwise be eligible. Provide a narrative to support the costs included in each category. List and describe all anticipated funding sources with projected amounts, i.e., ORR, State government, other federal program, and any other resources.

Part III: Application Review Criteria

A. Objectives, Need for Assistance, and Rationale for Proposing the Alternative Project

1. Identification of the problem to be addressed by the project is based on a thorough examination and description of: Refugee welfare utilization, current coordination of services in the local resettlement community; opportunity for early employment for refugees; availability of concurrent, culturally and linguistically appropriate employment and language services; adequacy of the statistics used to describe the problem. Points: (10)

2. The degree to which the rationale for proposing the demonstration project is justifiable and appropriate; probability that the project will increase refugee self-sufficiency, reduce or avoid welfare dependency among arriving refugees, and increase coordination among service providers. Probability that the project will be cost-effective. Points: (10)

B. Approach/Program Strategy

The proposed project design is clear, logical and theory based, reflecting the state of knowledge and experience in this field. Clarity, completeness and reasonableness of the proposed strategy as it relates to the target population and the geographic area to be covered; anticipated need for interim cash assistance; adequacy of the cash assistance policies and administration; reasonableness of policies and procedures for appeals and fair hearings; coordination of services and assistance; availability of other Federal and State programs; consultation with the State Coordinator and voluntary agencies, as appropriate. Points: (35)

C. Results, Benefits Expected, and Proposed Outcomes

The proposed project, if successfully implemented, is capable of achieving the stated results. Reasonableness of the outcomes proposed; feasibility of the methodology for collecting outcome data and client feedback. Points: (15)

D. Organizational Capacity

Adequacy of the organizational capacity and resources for project administration and management; the qualification and expertise of the project staff; and the quality of the design and adequacy of the proposed program monitoring and reporting system. Points: (15)

E. Project Budget

Reasonableness and adequacy of the budget in relation to the expected

activities and outcomes. Completeness of the budget and line-item budget narrative. Reasonableness of procedures used to estimate the budget request. Points: (15)

Part IV: Application Submission

The Director reserves the right to award more or less than the funds described above depending upon the quality of the applications, or such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be required to reduce the scope of selected projects to accommodate the amount of the approved grant award.

Standard Form 424 with instructions for submitting an application was published in the **Federal Register** on December 9, 1997 (62 FR 64856).

If an application represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified as applicant by the Authorized Representative's signature on the SF–424, Box 18.d, will be the grant recipient and will have primary administrative and fiscal responsibilities. An applicant entity must be a public or private nonprofit organization.

General Application Procedures

All applications which meet the stipulated deadline and other requirements will be reviewed competitively and scored by an independent review panel of experts in accordance with ACF grants policy and the criteria stated above. The results of the independent review panel scores and explanatory comments will assist the Director of ORR in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by the reviewers. Highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers and of ACF/ORR officials; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director of ORR.

A. Availability of Forms

Copies of the **Federal Register** are available on the Internet website address: www.access.gpo.gov/nara/index.html#cfr) and at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by sending a written or faxed request to the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, D.C. 20447, Fax: (202) 401–5487.

B. Forms, Certifications, Assurances, and Disclosure

1. Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

2. Budget and Budget Justification—Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. According to the instructions for completing the SF–424A and the preparation of the budget and budget justification, ''Federal resources'' refers only to the ACF/ORR grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel: Costs of employee salaries and wages. Identify the project director and for each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies.

Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF/ORR-sponsored meetings should be detailed in the budget.

Equipment: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project.

Supplies: Costs of all tangible personal property other than that included under the Equipment category.

Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, etc. Contracts with secondary recipient organizations, including delegate agencies (if applicable), should be included under this category.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and to exceed the simplified acquisition threshold fixed at 41 USC 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as requests for proposal or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency,

the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development, and administrative costs.

Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs: This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

An applicant proposing to charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the agreement, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income: The estimated amount of income, if any, expected to be generated from this project. Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information. Program income generated under a Federal grant resulting from this announcement may be added to funds committed to the project and used to further program objectives. There is no requirement to request prior approval to defer use of program income for a later period.

Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

3. Applicants must provide the following certifications. Copies of the forms and assurances are located at the end of this announcement.

a. Certification regarding lobbying if your anticipated award exceeds $100,000.

b. Certification regarding environmental tobacco smoke. By signing and submitting the applications, applicant provides certification that they will comply with the requirements of the Pro-Children Act of 1994 (Pub. L. 103–227, Part C—Environmental Tobacco Smoke) and need not mail back the certification with the application.

c. Certification regarding debarment, suspension, and other Ineligibility. By signing and submitting the applications, applicant provides certification that they are not presently debarred, suspended or otherwise ineligible for this award and therefore need not mail back the certification with the application.

d. Drug-Free Workplace Act of 1988.

C. Deadline

1. Mailed applications shall be considered as meeting this announced deadline if they are sent on or before the deadline date and received by ORR in time for the independent review. Applications should be mailed to: Office of Refugee Resettlement, Administration for Children and Families, Division of Community Resettlement, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447, *Attention: Alternative Projects.*

Applicants must ensure that a legibly dated U.S. Postal Service postmark, or a legibly dated, machine produced postmark of a commercial mail service appears on the envelope/package containing the application(s). An acceptable postmark from a commercial carrier is one which includes the carrier's logo/emblem and shows the date the package was received by the commercial mail service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the Administration for Children and Families, Office of Refugee Resettlement, Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ACF.

D. Nonprofit Status

Applicants other than public agencies must provide evidence of their nonprofit status with their applications. Either of the following is acceptable evidence: (1) A copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate.

E. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.''

As of June 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau. All remaining jurisdictions participate in the E.O. process and have established Single Points of Contact (SPOCs).

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them to the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that ORR can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8 (a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Community Resettlement, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

F. The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

All information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424, (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139), Expiration date 10/31/2000.

Public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. 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.

G. Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR Part 74 or 92.

H. Reporting Requirements

Grantees are required to file the Financial Status Report (SF–269) semi-annually and Program Performance Reports (OMB Approval No. 0970–0036) on a quarterly basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The official receipt point for all reports and correspondence is the ORR Division of Community Resettlement. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Project Officer named in the award letter. The mailing address is: 370 L'Enfant Promenade SW., Sixth Floor, Washington, DC 20447.

A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: April 30, 1998.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 98–12301 Filed 5–7–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–09]

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 7256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1226; 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, 1998 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. 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; *Energy:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; *Interior:* Ms. Lola D. Knight, Department of the Interior, 1848 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–2059; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: April 30, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 5/08/98

Suitable/Available Properties

Buildings (by State)

California

Broadcast Center
10888 La Tuna Canyon Road
Sun Valley Co: Los Angeles CA 91352–
Landholding Agency: Air Force
Property Number: 189810031
Status: Unutilized
Comment: 58,000 sq. ft. bldg. on 2 acres, most recent use—office/communications

New Mexico

Gran Quivira Visitor Station
Gran Quivira Ruins, SR55
Mountainair Co: Torrance NM 87036–
Landholding Agency: Interior
Property Number: 619820003
Status: Unutilized
Comment: 1121 sq. ft., stone, presence of asbestos, off-site use only

North Carolina

Tarheel Army Missile Plant
Burlington Co. Alamance NC 27215–
Landholding Agency: GSA
Property Number: 549820002
Status: Excess
Comment: 31 bldgs., presence of asbestos, most recent use—admin., warehouse, production space and 10.04 acres parking area, contamination at site—environmental clean up in process
GSA Number: 4–D–NC–593

Virginia

Bldg. LP–160
Naval Air Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820004
Status: Unutilized
Comment: 3013 sq. ft., needs rehab, most recent use—maintenance shed, off-site use only

Bldg. SP–277
Naval Air Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820005
Status: Unutilized
Comment: 84 sq. ft., most recent use—bus stop shelter, off-site use only

Bldg. V–56
Naval Air Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820006
Status: Unutilized
Comment: 587 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. CD24
Naval Station Norfolk
Norlfok VA 23511–
Landholding Agency: Navy
Property Number: 779820007
Status: Excess
Comment: 4275 sq. ft., most recent use—office, off-site use only

Bldg. CD25
Naval Station Norfolk
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820008
Status: Excess
Comment: 4350 sq. ft., most recent use—vehicle maintenance shed, off-site use only

Bldg. V–49
Naval Air Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820009
Status: Excess
Comment: 32,290 sq. ft., presence of asbestos/lead paint, most recent use—auto vehicle shop, off-site use only

Bldg. V–136
Naval Air Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820010
Status: Excess
Comment: 12,610 sq. ft., presence of asbestos/lead paint, most recent use—auto vehicle shed/storage, off-site use only

Bldg. A–80
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820011
Status: Excess
Comment: 36,960 sq. ft., presence of asbestos/lead paint, most recent use—auto vehicle shop, off-site use only

Bldg. A–120
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820012
Status: Excess
Comment: 3275 sq. ft., presence of asbestos/lead paint, most recent use—vehicle shop, off-site use only

Bldg. A–121
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820013
Status: Excess
Comment: 9382 sq. ft., presence of lead paint, most recent use—auto vehicle shop, off-site use only

Bldg. A–123
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820014
Status: Excess
Comment: 6559 sq. ft., presence of lead paint/asbestos, most recent use—storage, off-site use only

Bldg. A–126
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820015
Status: Excess
Comment: 1788 sq. ft., presence of lead paint, most recent use—public works shop, off-site use only

Bldg. A–127
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820016
Status: Excess
Comment: 4328 sq. ft., presence of lead paint, most recent use—vehicle refuel shop, off-site use only

Bldg. Z–93
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820017
Status: Excess
Comment: 38,930 sq. ft., presence of lead paint, most recent use—public works shop, off-site use only

Bldg. Z–194
Naval Station
Norfolk VA 23511–

Landholding Agency: Navy
Property Number: 779820018
Status: Excess
Comment: 4226 sq. ft., presence of lead paint, most recent use—maintenance shop, off-site use only

Bldg. Z–394
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820019
Status: Excess
Comment: 2400 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. Z–398
Naval Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779820020
Status: Excess
Comment: 1680 sq. ft., most recent use—pwc shop, off-site use only

Unsuitable Properties

Buildings (by State)

California

02–120 Liz White Residence
Wilson Creek
Klamath Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619820002
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldg. 4
Beckoning Point Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779820002
Status: Excess
Reason: Extensive deterioration

Bldg. 33
Naval Magazine Lualualei
West Loch Branch Co: Oahu HI
Landholding Agency: Navy
Property Number: 779820021
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 947, Qtrs. D
Naval Air Station
Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 779820003
Status: Unutilized
Reason: Extensive deterioration

New Mexico

11 Bldgs., Tech Area I
Kirtland AFB
#639–43, 828, 830, 863, 881–883
Albuquerque NM 87185–
Landholding Agency: Energy
Property Number: 419820001
Status: Excess
Reason: Extensive deterioration

Washington

Bldgs. 1158, 1159
Ross Lake Natl Recreation Area
Co: Whatcom WA
Landholding Agency: Interior
Property Number: 619820001
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 98–11938 Filed 5–7–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Final Listing Priority Guidance for Fiscal Years 1998 and 1999

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces final guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during fiscal year (FY) 1998 and FY 1999. Although the Service is returning to a more balanced listing program, serious backlogs remain and a method of prioritizing among the various activities is necessary. Highest priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Processing of proposed or final designations of critical habitat will be accorded the lowest priority.

DATES: This Listing Priority Guidance is effective May 8, 1998 and will remain in effect until modified or terminated.

ADDRESSES: Questions regarding this guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ–452, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098–43105), that govern the assignment of priorities to species, both domestic and foreign, under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different types of listing actions such as preliminary determinations, proposed listings, and final listings.

Serious backlogs of listing actions resulted from major disruptions in the listing budget beginning in FY 1995 and a moratorium on certain listing actions during parts of FY 1995 and FY 1996. The enactment of Pub. L. 104–6 in April 1995 rescinded $1.5 million from the Service's budget for carrying out listing activities through the remainder of FY 1995. Pub. L. 104–6 also prohibited the expenditure of the remaining appropriated funds for final determinations to list species, whether foreign or domestic, or designate critical habitat; in effect, this placed a moratorium on those activities. During the first half of FY 1996, the moratorium continued while a series of continuing resolutions provided little or no funding for listing activity. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down. The moratorium on final listings and the immediate budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 domestic and foreign species. The extremely limited funding available to the Service for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service faced the considerable task of allocating the available resources to

the significant backlog of listing activities. The Final Listing Priority Guidance for FY 1996 was published on May 16, 1996 (61 FR 24722). The Service followed that three-tiered approach until the Final Listing Priority Guidance for FY 1997 was published on December 5, 1996 (61 FR 64475). The FY 1997 Listing Priority Guidance employed four tiers for assigning relative priorities to listing actions to be carried out under section 4 of the Act. Tier 1, the Service's highest priority, was the processing of emergency listings for species facing a significant risk to their well-being. Processing final decisions on pending proposed listings was assigned to Tier 2. Tier 3 was to resolve the conservation status of species identified as candidates (species eligible for proposed listing rules) and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations, which provide little or no additional conservation benefit to listed species, and processing delistings and reclassifications from endangered to threatened status were assigned lowest priority (Tier 4).

While operating the listing program under the Final FY 1997 Listing Priority Guidance, the Service focused its resources on issuing final determinations (Tier 2 listing activities); no Tier 1 actions (emergency listings) were required during FY 1997. During FY 1997, the Service made final determinations for 156 species (145 final listings and 11 withdrawals). As a result of this expeditious progress, only 100 proposed species remained at the end of FY 1997 (including newly proposed species). After April 1, 1997, the Service began implementing a more balanced listing program and began processing more Tier 3 listing actions. Thus, the Service also made expeditious progress on determining the conservation status of species designated by the Service as candidates for listing. A candidate is a species for which the Service has found that there is sufficient information indicating that a listing proposal is appropriate. Such a finding may be made on the Service's own initiative, or as a result of the petition process. Once a species is placed on the Service's list of candidates, its conservation status must be resolved by either proposing the species for listing or by completing a candidate removal form. During FY 1997, the Service proposed 23 species from the candidate list. In addition, the Service published 11 petition findings in FY 1997. The Service also updated the list of candidate species with the publication of the most recent Candidate Notice of Review published on September 19, 1997 (see 16 U.S.C. 1533(b)(3)(B)(iii)(II)); at that time, there were 207 candidate species. This total represents 52 additions to the list of candidates.

Although the Service returned to a more balanced listing program during FY 1997, serious backlogs of listing activity remain. Besides the 100 species awaiting final rules and the 207 candidates awaiting resolution of their conservation status, there were 30 species with due or overdue 12-month petition findings and 47 species with due or overdue 90-day petition findings, plus one petition to list 3700 foreign species due a 90-day finding.

It is important to recognize that the Service faces even greater backlogs in its responsibilities to implement other aspects of the Act. There is a large section 7 consultation and Habitat Conservation Planning (HCP) backlog. During FY 1998, the Service projects that it will conduct more than 40,000 consultations with other Federal agencies, including approximately 900 formal consultations. The Act mandates time frames for consultation completion. The consultation workload continues to increase as new species are listed. The Service also projects that there will be approximately 75 new HCPs requiring review in FY 1998, bringing the number of active HCPs to approximately 300. The recovery backlog includes over 300 species awaiting recovery plans and an extreme shortage of recovery implementation funding. Completing recovery plans within 2½ years after a species is listed and funding implementation of completed plans is integral to the Act's goal of removing the threats to listed species so that they can eventually be recovered. The Service bases its funding requests on the workloads faced by all activities of the endangered species program. Because the magnitude of the other endangered species backlogs exceeds that of the listing backlog, the President's FY 1998 request for increased funding for endangered species programs was focused on section 7 consultation, HCPs, and recovery rather than listing. However, the President's budget for FY 1999 includes a significant increase for the program overall and a portion of the increase is identified for listing.

In enacting the Department of the Interior's FY 1998 Appropriations Act (Pub. L. 105–83, 111 Stat. 1543 (Nov. 14, 1997)), Congress agreed with the President's priorities regarding endangered species funding, providing significant increases to the section 7 consultation, HCP, and recovery programs. Moreover, Congress expressly limited the amount the Service can spend on listing actions (including delistings, reclassifications, and the designation of critical habitat) to $5.19 million.

Federal agencies can act only to the extent funds are provided by the Congress. This is a fundamental check and balance of our Federal system of Government, and is indeed a constitutional requirement. The enactment of the Act does not carry with it the appropriation of funds necessary to implement that law. Absent appropriations by the Congress, the Service cannot take the actions required by the Act. Appropriations are provided to the Department of the Interior and the agencies therein, including the Service, pursuant to annual appropriation acts. The FY 1998 Appropriations Act, including the maximum of $5.19 million for implementing listing activities (subsections (a), (b), (c), and (e) of section 4 of the Act), is binding upon the Department and must be strictly followed.

Given the backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions awaiting administrative findings, and the limited funding available to address these backlogs, it is extremely important for the Service to focus its efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. The purpose of this Listing Priority Guidance is to reconcile the requirements of the Act with the realities of the annual appropriation act. The Listing Priority Guidance is an exercise of the Service's discretion concerning how best to expend that amount of money for listing activities in a manner that provides the greatest conservation benefit to threatened and endangered species consistent with the purposes of the Act. In other words, the Listing Priority Guidance is the Service's blueprint for coming into compliance with the Act as quickly as the available appropriations allow.

It has been longstanding Service policy (1983 Listing and Recovery Priority Guidelines (48 FR 43098)) that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. The Service also must

prioritize among types of listing actions and this level of prioritization is what necessitates the guidance provided below.

The Service has made this guidance applicable to FY 1999 as well as FY 1998 to avoid any confusion over whether this guidance will remain in effect if the budget process for FY 1999 is delayed. However, when the Service receives its FY 1999 budget, it will review this guidance, and, if appropriate, modify or terminate it. Funding for delistings and reclassifications from endangered to threatened status is moved entirely to the recovery funding subactivity in the Administration's FY 1999 budget proposal, so these activities would be removed from Tier 2.

Analysis of Public Comments

On March 5, 1998, the Service published a notice in the **Federal Register** (63 FR 10931) announcing proposed listing priority guidance for FY 1998 and FY 1999 and solicited public comment on that proposed guidance. The Service received 6 letters of comment on the proposed guidance. Two letters were generally in favor of the proposed guidance and four were generally opposed. A summary of the issues raised and the Service's response follows.

Issue 1: The notice is unclear as to the application of the Listing Priority Guidance to foreign species. The commenter said that the guidance should only apply to U.S. species because the listing and delisting of foreign species is handled in the Service's headquarters by a different office than domestic listing activities and with different budget dollars.

Response: The Listing Priority Guidance is indeed applicable to both foreign and domestic species, since the Congressional budget appropriations for all listing activities, foreign and domestic, is limited in FY 1998 to $5.19 million. The final Listing Priority Guidance has been modified to clarify this point. However, exceptions in the operation of the Guidance may be made with respect to foreign species as explained in the discussions below.

Issue 2: Two commenters recommended that the Service recognize sustainable use as a reason for delisting species, especially when the listed status of the species conflicts with the recovery and/or management program of the nation where the species occurs. Both referred primarily to delisting of foreign species, such as the Namibian cheetah and Nile crocodile. One commenter considered inclusion of delisting in Tier 2, albeit at a low level within Tier 2, an improvement over Listing Priority Guidance of FYs 1996 and 1997. The other suggested assigning delisting activities to Tier 1 or at least the highest priority of Tier 2.

Service response: The Service recognizes the conservation benefits of delisting activities for domestic and foreign species and recognizes that, with regard to foreign game species, fees from trophy hunters can, in some cases, provide economic incentives for landowners to maintain healthy populations of game species. It should be noted, however, that several foreign big game species are listed under the Act and import permits have not been issued for hunting trophies for species listed as endangered. A large percentage of international hunters are Americans who might invest in the hunting program if the species were not listed and import was permitted.

However, the Service disagrees that delisting should be the highest priority of Tier 2, although for some foreign species it will be a higher priority. Furthermore, placing delisting activities ahead of emergency listing actions (Tier 1), as suggested by the commenter, is contrary to the intent of section 4 of the Act. With limited resources, the Service must prioritize among the various listing activities. The Service has placed highest priority on emergency listing actions since those actions may mean the difference between extinction and existence. The Service will not place any listing actions over emergency listing actions.

The Service recognizes that listing, reclassifying from endangered to threatened, and delisting actions for foreign species are different, as the conservation benefits of those actions will be different than for domestic species (species with a range that includes the United States). The Service has placed delisting at the end of Tier 2 for domestic species, because the conservation benefits of delisting are indirect. For foreign species, particularly when trade is a factor affecting the status of a species, the Service will also take into consideration the international legal status of the species. Thus, for species listed in Appendix II of the Convention on International Trade in Endangered Species (CITES), an alignment of their listing status under the Act should be evaluated. There may be species listed in CITES Appendix II (which allows for regulated trade that is not detrimental to the survival of the species), for which there can be potential conservation benefits of such trade, such as when such trade is part of the management plan of the country of origin. In such cases, listing under the Act as endangered, which prohibits such trade, may have potential conservation detriment for some species. Certainly, the United States should endeavor, when possible, to recognize the conservation programs of foreign countries, when based on sound science.

The Service placed delisting at the end of Tier 2 because the conservation benefits of delisting are indirect. The Service expends its limited resources to conserve imperiled species through final listing actions, resolving the conservation status of candidates, including new proposals for listing, and processing petition findings. These actions are vital to the continued existence of imperiled species and are important in the protection of the habitats upon which those species depend. The Service has determined that the above actions should receive higher priority than delisting activities. The Service acknowledges its responsibilities to delist and reclassify qualified species and plans on completing a small number of these activities in FY 1998. The President's FY 1999 budget request would fund delisting and reclassification from endangered to threatened status under the recovery subactivity for domestic species and under the Permits/CITES subactivity for foreign species; the President's budget would also remove delistings and reclassifications from endangered to threatened status from the listing cap. If these aspects of the President's budget are enacted, delisting and reclassification from endangered to threatened will no longer be in direct competition for funding with other listing activity and will be removed from this Listing Priority Guidance.

Issue 3: It is disingenuous for the Service to claim that the $5.19 million appropriated by Congress for the listing program in FY 1998 falls far short of the resources needed to completely eliminate the listing backlogs when that was all that the Department of the Interior requested for the listing program, and further, the Department specifically requested a listing cap. Therefore, the Service has failed to justify the proposed guidance.

Response: The President's budget request for the entire endangered species program for FY 1998 was $80 million. This budget request was significantly greater than the FY 1997 enacted budget of $68 million due to considerable workload facing the Service throughout the entire endangered species program. As stated previously in this notice, listing is not the only responsibility the Service has

under the Act. For instance, over 300 species await recovery plans, while approximately 900 formal section 7 consultations, which are, by regulation, to be completed within 90 days, will be due in FY 1998, and 200 HCP applicants are awaiting technical assistance and permit review and issuance. Consequently, the President's FY 1998 request for increased funding for the endangered species programs was focused on section 7 consultation, HCPs, and recovery rather than listing. Moreover, given the recent history of the listing budget, the FY 1998 request for listing was based on a realistic assessment of the level of funding that might be obtained.

The listing budget has always been subject to a cap, in the sense that Congressional committee reports allocate a certain amount of funds, and no more, to the listing program. For FY 1998, the Department of the Interior requested that Congress include the amount of funding available to listing on the face of the appropriations law to further clarify Congress' intent that the Service not be able to divert funding to listings from other programs. Moreover, the Service's budget justification to Congress made clear that the requested funding would not be sufficient to eliminate the listing backlog in FY 1998, particularly with regard to the designation of critical habitat. Congress could have chosen to provide additional funding and/or earmark funding for critical habitat designation, but did not do so.

The President's budget for FY 1999 seeks a $1.7 million increase for listing activity. The FY 1999 budget also moves delisting and reclassification to recovery since these activities are the end point of the recovery process.

Issue 4: The proposed listing priority guidance is not based on sound science. Critical habitat determinations should have a higher priority than withdrawals, delistings, and reclassifications, which offer no direct conservation benefits for listed species. Tier 2 should include listing decisions, critical habitat designations, and listing proposals for species with high, imminent threats; Tier 3 should prioritize other species based on the September 1983 listing priority guidance; and Tier 4 should include downlisting, delisting, withdrawals, and other non-protective actions.

Response: The Service disagrees with the assertion that the proposed listing priority guidance is not based on sound biological considerations, and remains firm in its belief that designation of critical habitat generally provides little or no additional conservation benefits beyond those provided by the consultation provisions of section 7 and the prohibitions of section 9, while the cost of designation is generally high. The Service will continue to determine whether critical habitat is prudent or not prudent at the time a species is listed (Tier 2) by determining whether designation of critical habitat would provide marginal benefit and, if so, weighing that benefit against any risks caused or increased by designation. However, any rulemaking resulting from a ''prudent'' determination will remain the Service's lowest priority because, even where there is benefit to the species, it is generally very slight. The listing of a species, on the other hand, provides an array of generally applicable prohibitions and protections, including the prohibition of agency actions causing jeopardy.

The Service has determined that inclusion of a limited number of delisting and reclassification actions in Tier 2 is justified. Although indirect, conservation benefits to individual species and the endangered species program are significant. As long as a species remains on the endangered and threatened lists, Service funds are expended for ongoing conservation activities, including reviewing and permitting activities associated with habitat conservation plans and other regulated activities pursuant to section 10 of the Act. Similarly, the Service must expend funds engaging in consultations with other Federal agencies under section 7 of the Act. Resources currently devoted to these activities could be redirected to other listed species more deserving of conservation efforts. Further, the primary objective of the Act is recovering species and removing them from the lists. Once it is determined that the Act's protections are no longer appropriate, it is important that delisting or reclassification proceed, particularly where listing creates an unwarranted management burden.

In addition to allowing the Service to direct resources to activity with greater conservation benefit, delisting a species or reclassifying a species from endangered to threatened and issuing a special rule also can provide regulatory relief to, and thus reduce the expenses of, other Federal agencies as well as State and private entities. For instance, following delisting of a species, Federal agencies are no longer required to consult under section 7 on Federal activities. In addition, the prohibitions and permit requirements of sections 9 and 10, respectively, which apply to both public and private entities, are eliminated. Thus, delisting and reclassification not only reduces Service expenditures, but it has the added benefit of relieving unnecessary restrictions and burdens on States and private citizens, and may increase public support for the endangered species program.

While the primary focus of the FY 1998 Listing Priority Guidance will remain adding species to the endangered and threatened lists, when appropriate, the Service believes that a small number of delisting and reclassification actions is critical to the integrity of the Act. The Service would process delisting or reclassification actions as appropriate and probably no more than 10–12 species during FY 1998, as compared to approximately 170 proposed and final listing actions, provided it is allowed to follow the Listing Priority Guidance.

Pub. L. 104–6 rescinded $1.5 million from the Service's FY 1995 listing budget and expressly prohibited the expenditure of the remaining funds for final listing and critical habitat determinations but did not prohibit delisting and downlisting activities. At the time the Pub. L. was enacted, the Service was working on several delisting and reclassification actions. For instance, on June 30, 1995, shortly after the moratorium and rescission, the Service published in the **Federal Register** (60 FR 34406) a notice of intent to delist the American peregrine falcon. Considerable status information was received from the public as a result of the notice. However, development of a delisting proposal ceased when the listing program ran out of funds and the entire program was shut down. The Service expects to proceed with this delisting proposal in FY 1998. Completing this delisting is a high priority for the Service. The Dismal Swamp shrew is another species that the Service anticipates delisting soon. Other delistings actions expected to proceed in FY 1998 include the Columbian white-tailed deer (Roseburg population), Hoover's wooly star (a plant), the Tinian monarch, and possibly one or two other domestic species. The Service estimates that approximately $300,000 to $400,000 of the $5.19 million listing budget would be necessary in FY 1998 to proceed with delisting activities for these five species in addition to the delisting and reclassification activities for a small number of other species. It should be noted that recovery actions and the gathering of information for use in the evaluation of delisting actions is funded from the Service's Recovery budget allocation, and not from the Listing allocation. Therefore, the only funding

from the Listing allocation is for the preparation and processing of proposed and final delisting actions.

The costs associated with retaining these species on the endangered and threatened lists are significant. Section 18 of the Act requires that the Service annually report reasonably identifiable Federal and State expenditures for the conservation of listed species. Expenditures include, but are not limited to, activities such as research, recovery (including grants to the States under section 6 of the Act), land acquisition, consultation under section 7 of the Act, permitting under section 10, and law enforcement, to the extent such activities can be attributed to particular listed species. According to the most recent expenditures report, Federal and State Endangered Species Expenditures, Fiscal Year 1994 (U.S. Fish and Wildlife Service, October 1997), the Service spent a total of approximately $1.2 million on conservation activities for the five species identified above (American peregrine falcon, Dismal Swamp shrew, Columbian white-tailed deer, Tinian monarch, and Hoover's wooly star). Non-Service Federal agencies expended $1.7 million on these species, bringing the total identifiable Federal expenditures to nearly $3 million. While it is likely that fewer resources were devoted to recovery of these species in more recent years, as recovery neared completion, expenditures associated with section 7 and section 9 typically increase as a species becomes more abundant. Consultations on Federal projects will continue to be necessary as long as these species are listed. The American peregrine falcon has made a dramatic recovery since its listing in 1970; with more than 1184 pairs currently in the wild, it has more than doubled the overall recovery goal of 456 pairs. The species occurs in nearly every State, and the eventual delisting will assist in reducing the section 7 consultation workload. At least 50 formal consultations were conducted for this species in 1996 and 1997. Even the Hoover's wooly-star, which has a much more limited range, required 7 formal consultations in 1996 and 1997. The sooner these species can be removed from the endangered and threatened lists, the sooner associated resources can be redirected to other listed species.

The Service expects to reclassify from endangered to threatened some foreign species or populations that are currently listed in CITES Appendix II, for which the United States listing under the Act prohibits commercial imports. The existing prohibition is seen by some range countries as potentially undermining their conservation and management programs. After evaluating the conservation status of the species, and assessing the scientific basis of those management programs and the potential conservation benefits of continued trade pursuant to CITES Appendix II, the Service expects to: (1) reclassify from endangered to threatened the yacaré caiman, with a special rule to allow trade in parts and products that comply with CITES tagging and other requirements for the species (the species has never been included in CITES Appendix I); (2) reclassify from endangered to threatened those populations of the vicuña that are listed in CITES Appendix II, with a special rule to allow trade in parts and products only if they comply with all CITES requirements for the species; and (3) consider the reclassification from endangered to threatened of certain captive-bred populations of both Morelet's crocodile and the Asian bonytongue fish, that are treated as Appendix II species, as part of approved CITES captive breeding programs. Although not all species for which CITES allows commercial trade should be reclassified under the Act, the Service intends to take CITES status into consideration. The Service also plans to finalize its review, pursuant to a petition, of the biological status of the cheetah to determine if it qualifies for reclassification from endangered to threatened.

The inclusion of withdrawals of proposed listings in Tier 2 is reasonable. As stated in the FY 1997 Listing Priority Guidance, it is appropriate to process a withdrawal notice on a proposed listing if that course of action is found to be appropriate and is based on a review of the proposed listing conducted in accordance with the listing priority guidance. The resolution of regulatory uncertainty that comes with a withdrawal notice, the fact that publication of the notice is a relatively small component of the total cost invested in the decision, and the fact that a withdrawal under section 4(b)(6)(A)(i)(IV) eliminates the legal liability under the time frames of section 4(b)(6)(A), all justify the placement of this activity in Tier 2. Preparation of withdrawals require relatively limited resources beyond that required to complete the final listing status evaluation of the proposed action. Some proposed listings are withdrawn as a result of the implementation of Candidate Conservation Agreements developed to conserve the species prior to its listing. While processing of the notice withdrawing the proposed rule is charged to the Listing budget, any funding associated with development or implementation of the Conservation Agreement is charged to a separate Candidate Conservation budget.

Issue 5: Several commenters contend that the Service lacks any authority to implement the proposed Listing Priority Guidance and that it may not be used by the Service to avoid its mandatory duty to designate critical habitat or take other actions on species. Further, it provides no deadlines by which the Service must take listing or critical habitat actions under any of the tiers, ignoring explicit deadlines set by Congress. One commenter cited several court rulings that found the Service's Listing Priority Guidance invalid because it attempted to turn the Service's mandatory duties under the Act into indefinite extensions of time.

Response: These commenters fundamentally misunderstand the purpose of the Listing Priority Guidance and the relationship between substantive law, such as the Act, and the annual appropriation of funds necessary to implement the law. The lack of deadlines in the Listing Priority Guidance is entirely appropriate, as the Listing Priority Guidance is not meant to replace the deadlines of the Act. Those deadlines are binding on the Service; the Service must comply with them *to the extent that it can do so within the limits of its appropriated funds. See* the discussion of Pub. L. 105–83 above.

Contrary to the assertions of these commenters, simply inserting deadlines into the Listing Priority Guidance would serve no purpose. If lack of funds render it impossible for the Service to meet all of the Act's deadlines, the Service must take the required actions as soon as appropriated funds make it possible to do so. Thus, if the Listing Priority Guidance included deadlines different than those of the Act, those deadlines would be no more enforceable that the Act's deadlines if the available funds prove insufficient. Conversely, the fact that deadlines arbitrarily set in the Listing Priority Guidance had not passed would not excuse the Service's failure to comply with the Act's deadlines if the Service had sufficient available funds to take the actions before the time specified in the Listing Priority Guidance.

As one commenter notes, while some courts have looked no further than the fact of the Service's violation of a particular deadline, other courts that have looked at the larger picture have held that the Listing Priority guidance is a reasonable method of prioritization,

and allowed the Service to follow the Guidance in coming into compliance with the Act. For example, in Forest *Guardians* v. *Babbitt*, No. CIV 97–0453 JC/DJS (D.N.M. Oct. 23, 1997), the court deferred to the Listing Priority Guidance's treatment of critical habitat designation for the silvery minnow: ''The court is persuaded by the recent cases that have deferred to the Secretary's listing priority system. * * * The Court is also moved by the prudential argument advanced by the Secretary. If the Service is forced to designate a critical habitat for the silvery minnow in the wake of the budgetary constraints, other species * * * may lose-out on the ESA's protections.* * * Deferring to the Secretary's listing priority is also consistent with the overarching purposes of the ESA—maximizing species protection and reversing the trends of extinction.'' Slip op. at 4–5. Such decisions recognize that the Service did not receive sufficient funding in FY's 1996, 1997, or 1998 to allow it to comply with all the mandated time frames under section 4 of the Act and that it was legally prohibited by the listing moratorium from expending funds to accomplish certain of those activities for over a year. Consequently, the Service developed a rational system for setting priorities that is most consistent with the purposes of the Act and makes most efficient use of limited funding as the Service manages it way out of the significant listing backlog that was created by the moratorium and funding rescission.

Issue 6: By placing candidate species conservation status determinations over processing of petitions, the proposed Guidance effectively eliminates the petition process. Unless a petitioned species faces an emergency, it will not be addressed. The Listing Priority Guidance directs the Service to complete listing determinations for candidates species, for which the Act mandates no deadlines, over making determinations for petitioned species, which have explicit mandatory 90-day and 12-month deadlines.

Response: The Service disagrees that the Listing Priority Guidance effectively eliminates the petition process. The development of proposals for candidate species and the processing of petitions are both included in Tier 2, reflecting the Service's expectation of making significant headway in eliminating the substantial petition backlog during FY 1998. Within Tier 2, the Service has given the highest priority to the finalization of proposals and new proposals for candidate species because the Service's most immediate concern is to initiate and finalize protection for the most imperiled candidate species. The Service also is still subject to the Fund for Animals settlement agreement, which requires resolution of the status of 85 candidate species by December 31, 1998. Thirty-five were addressed in FY 1997, 39 have been addressed so far in FY 1998 and the remaining 11 must be completed by the end of the calendar year. As the remaining candidates are addressed, the Service Regions will accelerate the pace of making petition findings.

The Service recognizes the need to address its backlog of petitions in FY 1998. At the end of FY 1997, thirty 12-month petition findings were due or overdue and forty-seven 90-day findings were due or overdue, in addition to a finding due on a petition to add 3700 foreign species to the lists. The actions requested in the various petitions include listing, delisting, reclassification, and designation or revision of critical habitat. The Service has received eight petitions thus far in FY 1998. In FY 1998, each region will assess the overdue petitions for which it has the lead responsibility. Overdue 12-month findings generally will be processed before processing new, non-emergency 90-day findings because the Service already has made an initial determination that listing of those species may be warranted. Completing the status reviews for these species and resolving whether or not listing is warranted will be a high priority. For those actions deemed warranted, the Service will assign the species a listing priority number in accordance with the 1983 listing priority guidance and either develop a listing proposal or designate the species a candidate with a ''warranted but precluded'' finding, thus ensuring it receives the appropriate priority for listing relative to other species. Those species for which listing is not warranted will be removed from further consideration. Among the petitions awaiting 90-day findings, the Service will process listing petitions ahead of those requesting delisting and reclassification. Petitions relating to critical habitat will have the lowest priority.

Issue 7: The Service needs to clarify what a candidate species is, what activities related to candidate species are given priority over petition findings, and how petitions will be assessed. Candidate conservation agreements must take a lower priority than statutory listing actions.

Response: Species are added to the endangered and threatened species lists through one of two mechanisms. The primary mechanism is the Service's own candidate assessment process, which accounts for the initiation of most listing proposals. The second mechanism is the petition process, which supplements the Service's own ongoing assessment process. In fact, it is not unusual for the Service to receive a petition to list a species that is already a candidate for listing or a petition requesting another action that the Service is already actively considering. Section 4(h) of the Act required the Service to establish and publish a ranking system to assist in the identification of species that should receive priority review for listing. Pursuant to this requirement, the September 1983 listing priority guidelines established a system for prioritizing species for listing based on magnitude and immediacy of threats. Once the Service determines that a species qualifies for listing and has sufficient information to support a proposal, the species is designated a candidate and is assigned a listing priority number in accordance with this ranking system.

The assessment of potential candidate species and monitoring of species formally designated candidate species do not receive priority over processing of petitions because the Service's candidate assessment program is funded through the Service's Candidate Conservation appropriation, not the Listing appropriation. Similarly, any early conservation activities, including candidate conservation agreements, conducted on behalf of candidate species are funded through the Candidate Conservation appropriation. In fact, in many cases, an agency other than the Service takes the lead in developing candidate conservation agreements. Because candidate assessment and conservation activities do not compete with listing funds they do not factor into the Listing Priority Guidance priority system.

Issue 8: The Service should clarify its decision criteria for emergency listings.

Response: The Service will consider the need for emergency listing any candidate or potential candidate and any species included in a petition. Consistent with the 1983 listing priority guidance, any petition or other documentation that demonstrates such a need will receive the highest priority (Tier 1). A petition must substantiate that the immediacy of the threats to the species is so great to a significant proportion of the total population that the normal rulemaking process (publishing a proposed rule, considering comments, then publishing a final rule) would be insufficient to prevent large losses that may result in extinction.

Assessment of an emergency situation may consider the number of individuals of the species that may be subject to the threats, the location of the area threatened in proximity to the remaining population, or other pertinent circumstances. While many petitions that the Service receives request emergency listing, as a rule they fail to meet the necessary criteria. Emergency situations are most likely to exist when a species has a very limited distribution and a major portion of its population or its habitat is under immediate threat of loss. Petitions that do not demonstrate that an emergency exists will be considered under Tier 2.

Issue 9: The proposed guidance does not use degree of threat as its main driver, nor as a basis for missing 90-day petition finding deadlines. Consequently, the guidance is likely to result in the Service focusing substantial resources on species that are facing lower degree of threat, as will occur when the Service elevates actions involving a less biologically imperiled candidate species over an action involving more biologically imperiled species that is the subject of a petition. How will the 1983 listing priority guidance be used in this priority system?

Response: The comment is primarily addressed at Tier 2, which includes finalizing determinations on pending proposals, preparing new proposals for candidate species (or removing species from candidacy), processing petitions for listing, delisting and reclassification, and processing a limited number of delisting and reclassification actions. Although the Listing Priority Guidance describes an approach to prioritizing types of listing actions, the underlying basis for the Listing Priority Guidance is the 1983 listing priority guidelines. Now that the Service has progressed to a more balanced listing program, it can justify assigning all of the aforementioned activities to the same tier. Inclusion within the same tier provides the Service greater ability to apply the 1983 listing priority guidelines. The majority of proposals awaiting final determinations include species with high level threats; therefore, finalization of these rules is a high priority. Preparing proposals for candidates with high level threats also is a high priority. Processing of petitions to list species that appear to face high level threats will have a lower but relatively comparable priority. Among the petitions, each Service Region will screen all overdue petitions for which it has the lead to identify any that may face relatively high, imminent threats. Unless certain petitions awaiting 90-day findings appear to warrant immediate action, such as in the case of a species with limited distribution facing a high level of threats, those petitions awaiting 12-month findings generally will have priority over those awaiting 90-day findings, since the Service has already made an initial determination that the petition contained substantial information indicating listing may be warranted. If the 12-month analysis results in a finding that listing is warranted, the species will be assigned a listing priority number in accordance with the 1983 guidelines and, depending on the priority, will be proposed for listing or designated a ''warranted but precluded'' candidate. Monitoring of these candidates will be accomplished using the Candidate Conservation appropriation, not the Listing appropriation. Processing 90-day findings for species for which the initial review indicates a lower urgency will have a lower priority. However, the Service wishes to emphasize its intent to make significant progress in reducing the total number of overdue 90-day and 12-month findings, provided it is allowed to follow its Listing Priority Guidance. Delisting actions, including processing of petitions for delisting and reclassifications from endangered to threatened, have the lowest priority in Tier 2, as explained in other sections of this notice.

Issue 10: The Listing Priority Guidance should not be allowed to intrude on the listing process because Congress has provided the ''warranted but precluded'' designation to handle limited resources.

Response: The ''warranted but precluded'' designation in the Act applies specifically to species subject to petitions for which the Service has found that the requested action is warranted but an immediate proposal is precluded by other higher priority listing actions. However, the Service's listing process is not limited to consideration of species under petition. The Service also actively reviews other species, identified through its own initiative, that may warrant the Act's protection. Once the Service determines that listing a species is warranted, regardless of whether it is the subject of a petition, it determines the species' priority for listing in accordance with the 1983 listing priority guidance. Therefore, the Service effectively considers all candidate species as species for which listing is ''warranted but precluded.'' This approach expressly ensures that the degree of threat the species faces drives the urgency of a proposed listing, regardless of whether the species is subject to a petition or is a candidate identified by the Service. This avoids a situation where, simply by virtue of a species being the subject of a petition, it takes priority over non-petitioned species in greater need of timely protection.

Issue 11: The FY 1998–99 Listing Priority Guidance appears to propose the same priority system for petitions embodied in the FY 1997 Listing Priority Guidance. Clarify how they differ.

Response: The order of priorities in the FY 1998–1999 Listing Priority Guidance is very similar to that of the FY 1997 guidance in that finalizing outstanding proposals and preparing new proposals for candidate species will be considered ahead of processing petitions. However, the FY 1998–99 Guidance differs from the FY 1997 Guidance in that petition processing has been elevated to Tier 2 along with finalization of proposals, processing new listing proposals, and, as the lowest priority in Tier 2, a limited number of reclassification and delisting actions. Placing petition processing within the same tier as these other activities in effect elevates their consideration within the whole prioritization scheme and provides the Service Regions greater latitude to process petitions simultaneous with other actions in Tier 2. Under this Guidance, the Service will focus on screening petitions to identify those that appear most likely to include a potentially high priority candidate and process those along with proposing candidates. Therefore, the Listing Priority Guidance for FY 1998–99 differs from the FY 1997 Guidance in that the Service expects to place a much greater emphasis on addressing overdue petitions in FY 1998.

Final Listing Priority Guidance for Fiscal Years 1998 and 1999

To address the biological, budgetary, and administrative issues noted above, the Service issues the following listing priority guidance for FYs 1998 and 1999. As with the Final Listing Priority Guidance for FY 1997 issued December 5, 1996 (extended on October 23, 1997), this guidance supplements, but does not replace, the 1983 listing priority guidelines, which were silent on the matter of prioritizing among different types of listing activities.

As noted above, the Department of the Interior's FY 1998 appropriation provides no more than $5.19 million for the Service's endangered species listing program. The $5.19 million budget for all listing activities (both foreign and domestic) will fall far short of the resources needed to completely eliminate the listing backlogs in FY

1998. Therefore, some form of prioritization is still necessary, and the Service will implement the following listing priority guidance in FY 1998 and FY 1999.

The following sections describe a three-tiered approach that assigns relative priorities, on a descending basis, to listing actions to be carried out under section 4 of the Act. The 1983 listing priority guidelines will continue to be used to set priorities among species within types of listing activities. In order to continue to move toward a more balanced listing program, the Service will concurrently undertake listing actions in Tiers 1 and 2 during FY 1998 with its listing budget of $5.19 million. As the Service informed Congress in its budget justification, critical habitat designations (Tier 3 actions) during FY 1998 should not be expected. The FY 1998 listing appropriation is only sufficient to support high-priority listing proposals and final determinations, petition processing activities, and a minimal number of high priority delisting/reclassification actions. A single critical habitat designation could consume up to twenty percent of the total listing appropriation, thereby disrupting the Service's biologically based priorities. Higher priority listing actions (Tiers 1 and 2) provide the greatest amount of protection for imperiled species while making the most efficient use of limited resources.

Completion of emergency listings for species facing a significant risk to their well-being remains the Service's highest priority (Tier 1). Processing final decisions on pending proposed listings, the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal), processing 90-day or 12-month administrative findings on petitions, and undertaking a limited number of delisting/reclassification activities are assigned to Tier 2. Third priority is the processing of petitions for critical habitat designations and the preparation of proposed and final critical habitat designations; these actions generally provide little or no added conservation benefit and are therefore assigned lowest priority (Tier 3).

Tier 1—Emergency Listing Actions

The Service will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant and imminent risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This would include preparing a proposed rule to list the species. The Service will conduct a preliminary review of every petition that it receives to list a species or reclassify a threatened species to endangered in order to determine whether an emergency situation exists. If the initial review indicates an emergency situation, the action will be elevated to Tier 1 and an emergency rule to list the species will be prepared. Emergency listings are effective for 240 days. A proposed rule to list the species is usually published at the same time as an emergency rule. If the initial review does not indicate that emergency listing is necessary, processing of the petition will be assigned to Tier 2 as discussed below.

Tier 2—Processing Final Decisions on Proposed Listings; Resolving the Conservation Status of Candidate Species (Resulting in a new Proposed Rule or a Candidate Removal); Processing Administrative Findings on Petitions to Add Species to the Lists and Petitions To Delist or Reclassify Species; and Delisting or Reclassifying Actions

The majority of the unresolved proposed species face high-magnitude threats. Focusing efforts on completing final determinations provides maximum conservation benefits to those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a withdrawal of a proposed listing. Completion of a withdrawal may not appear consistent with the conservation intent of this guidance. However, once a determination not to make a final listing has been made, publishing the withdrawal of the proposed listing takes minimal time and appropriations. Thus, it is more cost effective and efficient to bring closure to the proposed listing than it is to postpone the action and take it up at some later time. For the same reasons, the Service will consider critical habitat prudency and determinability findings to be Tier 2 activities, although actual designation of critical habitat is a Tier 3 activity. The publication of new proposals (candidate conservation resolution) and the processing of petition findings to add species to the lists of threatened and endangered species have significant conservation benefit and these actions are also now placed in Tier 2. Delisting activities also have been placed in Tier 2 because of the indirect conservation benefits of these actions, such as the reduction of section 7 consultation workload. Nationwide in FY 1998 and FY 1999, the Service will undertake the full array of listing actions in tiers 1 and 2 as appropriate. However, some Regions and some Field Offices still have significant backlogs of proposed species, candidates, petitions, and delistings. Therefore, additional guidance is needed to clarify the relative priorities within Tier 2.

Setting Priorities Within Tier 2

Pursuant to the 1983 listing priority guidelines, final determinations on proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest priority within Tier 2. If an emergency situation exists, the species will be elevated to Tier 1. Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed first to avoid possible extinction. Proposed species facing high-magnitude threats that can be quickly finalized have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete. Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue will be processed first.

Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. It provides some protection in that all Federal agencies must ''confer'' with the Service on actions that are likely to jeopardize the continued existence of proposed species. Resolving the conservation status of candidates will be afforded the second highest priority within Tier 2. The resolution of a candidate species' conservation status will be accomplished through the publication of new proposed rules or the processing of candidate removal forms (which, when signed by the Director, remove species from the candidate list). The 1983 listing priority guidelines are the basis for assigning a candidate species a listing priority number. This system ensures that species in the greatest need of protection will be processed first. New proposed listings for species facing imminent, high-magnitude threats (candidates with the highest listing priority numbers) will be processed ahead of candidates with lower listing priority numbers. The Service includes new proposals for petitioned species that are currently on the candidate list in this priority level within Tier 2.

The processing of 90-day petition findings and 12-month petition findings to add species to the lists will be the next priority among Tier 2 listing

activities. The Service will also screen all petitions to identify species that may have an imminent, high magnitude threat and process those concurrently with proposing new species. The Service will give priority to completing 12-month findings for species for which it has made a positive 90-day finding over processing petitions for species awaiting 90-day findings. If a positive 90-day petition finding is issued, the Service will make every reasonable effort to complete the 12-month finding in the appropriate time frame. When it is practicable for the Service to complete a 90-day finding within 90 days, the Service is statutorily afforded a 12-month period from the receipt of a petition to completion of the 12-month finding. However, in those cases in which it is not practicable for the Service to complete a 90-day finding within 90 days of receipt of the petition, the Service will still require 9 months to complete a thorough biological status review and issue a 12-month finding after the 90-day finding is completed.

For foreign species only, within the limited allocation assigned to that function, those final determinations that have potential for conservation benefit, and assist developing countries with the conservation and management of their species, will be of the highest priority within Tier 2. Currently proposed listings and status determinations on petitioned foreign species have the next highest priority within Tier 2. Since the Service cannot develop recovery plans for foreign species, priorities for listing or delisting must by necessity take into account the conservation programs of other countries in determining which actions are of higher priority. In virtually all cases, the only nexus for the U.S. is whether or not to allow importation of species, either for commercial or non-commercial purposes.

Finally, the Service expects to complete a small number of delistings and reclassifications during FY 1998. The Service believes that significant, albeit indirect, conservation benefit will result from the processing of certain high-priority delisting or reclassification actions. As long as a species remains on the endangered and threatened lists, Service funds are expended for ongoing conservation activities, including reviewing and permitting activities associated with habitat conservation plans and other regulated activities pursuant to section 10 of the Act. Similarly, the Service must expend funds engaging in consultations with other Federal agencies under section 7 of the Act. Resources currently devoted to these activities could be redirected to other listed species more deserving of conservation efforts. Further, the ultimate goal of the Act is recovering species and removing them from the lists. Once it is determined that the Act's protections are no longer appropriate, it is important that delisting or reclassification proceed, particularly where listing creates an unwarranted management burden. Moreover, the Service is obligated to maintain the lists of threatened and endangered species and it is of utmost importance to keep the lists accurate and up to date. In addition to allowing the Service to direct resources to activities with greater conservation benefit, delisting a species or reclassifying a species from endangered to threatened and issuing a special rule also can provide regulatory relief to other Federal agencies as well as State and private entities, which are subject to commerce and taking prohibitions under section 9 of the Act and permit requirements under section 10. Monitoring of species that are on the lists is accomplished through the recovery program, but the small expenditure of funds necessary to process the change in a species' status will continue to be undertaken by the listing program in FY 1998. However, the President's FY 1999 budget request proposes funding delistings and reclassifications from endangered to threatened status under the recovery subactivity rather than the listing subactivity. Therefore, if enacted, these activities will no longer complete for funding with other listing activities and will be removed from this Guidance. Until then, delisting and reclassification will be afforded the lowest priority in Tier 2.

The Service expects to make substantial progress in removing or reducing the backlogs of proposed species awaiting final determination, candidates awaiting resolution, and petitions awaiting findings during FY 1998 and FY 1999. During FY 1998 and FY 1999, the application of both the listing priority guidance described above and the 1983 guidelines are critical to maintaining nationwide and program-wide biologically sound priorities to guide the allocation of limited listing resources.

Tier 3— Processing Critical Habitat Determinations

It is essential during periods of limited listing funds to maximize the conservation benefit of listing appropriations. Designation of critical habitat is very costly. For instance, the cost of designating critical habitat is illustrated by two recent examples: The Service spent over $126,000 on designation of critical habitat for the marbled murrelet and approximately $1 million for the northern spotted owl. While in some cases the cost may be much less than it was for these two birds, the Service has found that in those cases where designation of critical habitat may provide some marginal benefit, such as for some broad ranging, highly habitat-specific species, the Service expects that the cost of designation would fall in the high cost range. However, the Service has determined that in most cases little or no additional protection is gained by designating critical habitat for species already on the lists and the Service's limited resources are best utilized for adding to the lists species that presently have very limited or no protection under the Act, rather than designating critical habitat for species already receiving its full protection. Because the protection that flows from critical habitat designation applies only to Federal actions, the Service continues to believe that the designation of critical habitat provides little or no additional protection beyond the ''jeopardy'' prohibition of section 7, which also applies only to Federal actions. Critical habitat will remain in Tier 3 during FY 1998; this will be re-evaluated when FY 1999 appropriations are received.

A recent court ruling remanded to the Service ''not prudent'' critical habitat determinations for 245 Hawaiian plant species listed between 1991 and 1996. To comply with the Court's remand in this case, the Service is proposing to the Court to complete reconsideration of the 245 ''not prudent'' findings (Tier 2) during FY's 1998, 1999, and 2000. This option would completely suspend all other listing activities in the Hawaiian Field Office until November 2000. A second option proposed by the Service would require dedication of fewer staff to the remands and allow for other listing activities in the Field Office, but would extend reconsideration of the prudency findings to FY 2002. However, for those species for which the Service finds that designation is prudent, proposed designation would proceed only after prudency determinations for all 245 species have been completed, and would be subject to any listing priority guidance that might be in effect at that time. Regardless of the approach selected (option 1 or 2), reconsideration of the prudency findings will significantly delay the Service's Hawaii Field Office in preparing proposed or final rulemakings to add approximately 97 currently unprotected Hawaiian

species to the endangered and threatened lists.

Allocating Listing Resources Among Regions

The Service allocates its listing appropriation among its seven Regional Offices, and the Washington Office for foreign species, based strictly on the number of proposed and candidate species for which the Region has lead responsibility with the exception of providing minimum ''capability funding'' for one listing biologist for each Region. The objective is to ensure that those areas of the country with the largest percentage of known imperiled species will receive a correspondingly high level of listing resources. The Service's experience in administering the Act for the past two decades has shown, however, that it needs to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term, thus the ''capability funding'' to each Region. In the past, when faced with seriously uneven workloads, the Service has experimented with reassigning workload from a heavily burdened Region to less burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a listing package will be useful for recovery planning and other conservation activities, and that expertise should be concentrated in the ecosystem or geographic area inhabited by the species. In addition, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge may be useful in processing a final decision. For these reasons, the Service has found it unwise to reassign one Region's workload to personnel in another Region. Because the Service must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to take more lower priority listing actions within Tier 2 (such as new proposed listings or petition findings), while Regions with many outstanding proposed listings will use most of their allocated funds on finalizing proposed listings.

Addressing Matters in Litigation

The Service understands the numerous statutory responsibilities it bears under the Act. These responsibilities, however, do not come with an unlimited budget. The Service is often required to make choices about how to prioritize its responses to those statutory responsibilities in order to make the best use of its limited resources. Under these circumstances, technical compliance with the Act with respect to one species often means failure to comply with the technical requirements of the Act for another species. This guidance is part of a continuing effort to express to the public that the Service is striving towards compliance with the Act in the manner that best fulfills the spirit of the Act, using the Service's best scientific expertise.

The Service understands that some may believe they have reason to bring suit against the Service for failing to carry out specific actions with regard to specific species. These actions question the Service's judgment and priorities, placing the emphasis of Act compliance on technical fulfillment of the statute for specific species rather than on the best use of the Service's resources to provide the maximum conservation benefit to all species. There are many outstanding section 4 matters currently in litigation. In each case, the plaintiff seeks, in effect, to require the Service to sacrifice conservation actions which the Service believes would have major benefits for actions which the Service believes would have much lesser effects.

In no case will the Service adjust its priorities to reflect the threat or reality of litigation. The Service has argued and will continue to argue before the courts that it should be allowed to prioritize its activities so as to best fulfill the spirit of the Act. Should any court not accept this argument, the Service will, of course, carry out the instruction of the court or the terms of any settlement reached. The Service believes, however, that such obligations impede the overall conservation effort for a much lesser benefit for a single species.

For example, during FY 1997, a plaintiff succeeded in obtaining a court order that required the Service to designate critical habitat for the southwestern willow flycatcher. The Service acknowledges that it had a responsibility to carry out this action and intended to meet its statutory requirement, like all others, when its budget and backlog of higher priority listing actions allowed. However, the Service still contends that this particular action had relatively little conservation benefit, especially compared to the numerous listings of wildlife and plants that had to be delayed to allow it to proceed when it did. As a result, the Service's Region 2 is suffering from an inability to prioritize its responsibilities and complete several high priority species listings last year.

Good Cause for Immediate Effectiveness

The Service finds that good cause exists to make this policy effective immediately. Immediate implementation of this policy serves to advance the public interest in maximizing the conservation benefits that can be achieved from funds appropriated for listing activities under the Act. As indicated herein, there are not sufficient funds to do all listing activities contemplated by section 4 of the ESA. The final Listing Priority Guidance for FY 1998–99 will allocate existing funds to most effectively achieve the purposes of the Act.

In addition, immediate implementation of this policy will not impose a burden on the public. This is internal Service guidance that does not in and of itself invoke or relieve restrictions on the private or public sector. Although this policy addresses the timing of particular regulatory actions (i.e., listing of species), those particular actions will be subject to public notice and comment and, in the absence of good cause, delayed effective date pursuant to the Administrative Procedures Act. Therefore, in accordance with 5 U.S.C. 533(d), the Service makes this policy effective upon publication in the **Federal Register**.

National Environmental Policy Act

The Service does not consider the implementation of this guidance to be a major Federal action significantly affecting the quality of the human environment for the purposes of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, ''Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' This guidance clearly qualifies as an administrative matter under this exclusion. The Service also believes that the exceptions to categorical exclusions (DM 2 Appendix 2) would not be applicable to such a decision, especially in light of environmental effects for such action.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: May 1, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–12284 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Policy on the Export of Live American Alligators and Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy.

SUMMARY: After review and analysis of comments received and for the reasons detailed in this notice, the Service proposes to adopt a policy against the issuance of permits for the export of live American alligators for commercial breeding or resale purposes. The American alligator is protected under the Endangered Species Act of 1973 (ESA) as threatened due to similarity of appearance and under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as Appendix II. The Service may issue an export permit upon finding that all applicable permit issuance requirements have been met. Exports of animals listed on Appendix II of CITES may occur only if the Scientific Authority has advised the Management Authority that such exports will not be detrimental to the survival of the species and the Management Authority is satisfied the animals were not obtained in violation of laws for their protection. Based on documentation presented for consideration by the CITES Parties in 1983, the Service has determined that the American alligator is listed on Appendix II for reasons of similarity in appearance under Article II.2(b) of CITES as well as the potential threat to the species survival under CITES Article II.2(a).

This notice announces a proposed policy by the Service on the export of live American alligators. Based on the information received in response to the June 24, 1997, notice, the Service is unable to find that the export of live American alligators either for commercial breeding or resale purposes is not detrimental as required under CITES or that such exports comply with Executive Order 11987—*Exotic Organisms*. Applications for permits to export live American alligators for purposes such as scientific research or zoological exhibition would be evaluated on a case-by-case basis.

DATES: The Service will consider all information and comments received by June 8, 1998 in making its final decision on this proposal. A public meeting will be held at the Delta Resort Orlando, 5715 Major Boulevard, Orlando, Florida 32819–7988, on May 5, 1998, from 1:30 pm to 3:30 pm.

ADDRESSES: Please send comments or other correspondence concerning this document to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 700, Arlington, VA 22203. Materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Management Authority.

FOR FURTHER INFORMATION CONTACT: Ms. Teiko Saito, Chief, Office of Management Authority, telephone 703–358–2095, fax 703–358–2298.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) published a notice on June 24, 1997 (62 FR 34074), requesting submission to the Service of any information available on the impacts of exports of live American alligators. Generally, in order to export species of wildlife protected under the ESA and/or CITES, an export permit must be issued. The Service is the agency responsible for reviewing applications for export of wildlife. Each permit application must be carefully evaluated to ensure compliance with all applicable regulations and executive orders. The American alligator is protected under the Endangered Species Act of 1973 (ESA) as threatened due to similarity of appearance and under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as Appendix II. A permit for export of American alligators can only be issued if the Service can determine:

1. That the export will not be detrimental to the survival of the species (50 CFR 23.15(d)(1));

2. That the animals to be exported were not obtained in violation of laws for their protection (50 CFR 23.15(d)(2));

3. That the authorization requested does not potentially threaten a wildlife population (50 CFR 13.21(b)(4)); and

4. That the requirements of Executive Order 11987, *Exotic Organisms*, are met. (This Executive Order, in part, requires ''Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur.'' In this instance, introduction is defined to include ''the release, escape, or establishment of an exotic species into a natural ecosystem.'')

5. That live specimens are prepared for shipping and shipped in compliance with the International Air Transport Association (IATA) Live Animal Regulations (for air transport) or CITES guidelines for transport (for other transport).

The Service received requests from the Florida Game and Freshwater Fish Commission and the Louisiana Department of Wildlife and Fisheries that we review the criteria for issuance of permits for export of live American alligators for commercial breeding or resale purposes and to restrict issuance of such permits until a review could be completed. In response to these concerns, the Service published the June 24, 1997, **Federal Register** notice requesting submission of any information available to assist us in evaluating such impacts.

In addition, the problems associated with the introduction of exotic species have become increasingly apparent worldwide. The problems have been discussed in a number of international fora such as the meeting of the CITES Conference of the Parties in 1997 in Zimbabwe, the World Conservation Congress in 1996, and the Conference on Alien Species in Norway in 1996. In the United States, approximately 122 species of exotic (non-indigenous) species of fish and wildlife have already established free-living populations and are causing great harm. The import of potentially harmful exotic species is currently being reviewed by the Service in the context of the Lacey Act prohibitions on import of injurious species. In relation to export of native species, E.O. 11987 restricts the use of Federal funds, programs, or authorities (i.e., the issuance of CITES export permits) to export native species outside the United States. The American alligator is one of the few native species that requires a CITES export permit and for which we have received applications for export of large numbers of live specimens. Given the documented introduction of other crocodilians outside their range, in evaluating an application for export of live American alligators the Service must take into consideration the ecological damage that could result from introduction of alligators, either planned or unplanned, into ecosystems outside their natural range in the United States.

Commercial enterprises for the breeding or resale of American alligators outside their natural range provide the most serious conservation concerns regarding the threat of planned or accidental introductions of exotic species. The introduction of Morelet's crocodile (*Crocodylus moreletti*) into American crocodile (*C. acutus*) habitat in western Mexico is attributed to escapes from breeding facilities, and the introduction of caiman (*Caiman crocodylus*) into southern Florida is attributed to caimans imported for the pet trade that either were released or escaped. Properly designed scientific research projects and facilities designed to exhibit specimens to the public generally present a lower level of concern in relation to accidental introduction of species since there are limited numbers of specimens involved and plans for disposition of specimens are generally a part of the overall design of the project or facility.

Analysis of Comments

In response to the June 24, 1997, **Federal Register** notice, 11 comments were received. Comments were received from the States of Louisiana and Florida (the two States which contain the majority of the habitat for wild American alligators and which supply hatchlings and eggs to alligator farmers located throughout the Southeastern United States), the IUCN Crocodile Specialist Group, the Humane Society of the United States, three individual alligator farmers, and four associations dealing with alligator farming. Ten of the eleven commenters strongly opposed the export of live American alligators. One commenter supported such exports.

Comment: Nine commenters voiced strong concerns in the area of enforcement. Areas of concern included: Reduced regulatory control, past illegal trade in crocodilians outside the United States, the undermining of effective legal management programs, lack of assurances that other countries would provide comparable control mechanisms on farm inspections and enforcement to prevent illegal trade, inadequate re-export controls over alligators (either as products or live), the type of CITES tags that would be used for alligators originating in the United States yet harvested in another country, and confusion or compromise of current well regulated channels of international control and trade regulation. One commenter stated that there were a number of examples where demand for captive breeding stock has generated demand for illegally acquired specimens from the range countries. Four commenters also pointed out that the limited range of the American alligator has been an important factor in the effectiveness of enforcement efforts to ensure that laws enacted to protect the alligator are complied with.

Response: The Service recognizes the concerns of the commenters in the area of enforcement. The States have put a great deal of time, effort, and planning into their conservation management programs to protect the American alligator. At one time there was extensive poaching and illegal trade in American alligators which has diminished drastically thanks to the work of the States and the cooperation of the industry. The States and the Service have worked together closely to develop guidelines for the export of alligator skins to ensure that the skins have been acquired legally. Each skin must be tagged with a CITES export tag in accordance with State regulations, and that tag must be on the skin at the time of export. The Service uses the data provided by the States from their conservation management programs to make the no detriment and legal acquisition findings required under CITES for the export of American alligator skins. Therefore, CITES export permits for export of tagged alligator skins continue to be issued. The CITES Parties have long recognized the importance of monitoring trade in crocodilian skins worldwide and first adopted a resolution concerning the universal tagging of crocodilians in 1992 (Res. Conf. 8.14). This resolution was revised in 1994 (Res. Conf. 9.22) and has been very effective in enabling Parties to closely monitor and control trade in crocodilian skins. The U.S. alligator tagging program complies with this resolution. However, the focus of the resolution is on trade in skins, which constitutes the majority of the international commercial trade in crocodilians. At the time the resolution was first adopted, there was very little international commercial trade in live crocodilians. The export of live animals is not covered by the resolution and raises different concerns and responsibilities than the export of parts and products.

Comment: Two commenters were concerned over the types of CITES tags that would be placed on American alligators harvested outside the United States. One commenter thought CITES tags should be denied for animals already out of the country. The other thought CITES tags should not be issued for species out of their natural ranges.

Response: The Service is also concerned with the question of CITES tags for American alligators that are not harvested in the United States. Each American alligator harvested in the United States is tagged with a permanently locking CITES export tag bearing a legend showing the US–CITES logo, State of origin, species, year of take, and a unique serial number. Tags must be placed on each skin in accordance with State requirements. Any tags that break prior to export must be replaced prior to actual export. Under CITES Resolution Conf. 9.22, all crocodilian skins must be tagged, and the tags must remain on the skin until it has been processed and cut. CITES tags for crocodilians should indicate the country of origin of the specimen and are placed on the skin at or near the time of harvest. The country of origin is considered to be ''the country where the animal was taken from the wild or the country of natal origin of the animal'' (50 CFR 10.11). Therefore, specimens that originated in the United States, exported to another country, and harvested in that country would require tags to show the country of origin as the United States. The Service also has concerns about CITES tags for U.S.-origin alligators being issued by other countries who may or may not monitor the species as closely as the United States. Within their range, crocodilians that are harvested based on sustainable use ranching programs have a high conservation value. Crocodilians commercially bred in countries outside their range have, at best, a low conservation value since their production is not reliant on conservation of habitat needed to maintain wild populations. In the case where a captive breeding facility for American alligators is established outside the United States, the CITES tags for offspring of the founding stock would show the species as American alligator and the country of origin as the country where the facility is located. The one instance where we are aware of this already happening is in Israel. We have requested information from the CITES Management Authority of Israel regarding the CITES tags used for American alligators originating from the Hammat Gader facility which breeds American alligators, but have not yet received a reply.

Comment: One commenter pointed out that the American alligator export program is an example of successful management which has been based on a close working relationship between the States and the Federal Government. In addition, the effectiveness of monitoring and enforcing the management program is due to the limited natural range of the American

alligator. Exports of live specimens could jeopardize the current management programs which could, in turn, impact wild populations.

Response: The Service agrees that the American alligator represents a conservation management success story. The American alligator has gone from being listed as endangered under the ESA to being threatened due to its similarity in appearance to endangered crocodilians and a model for sustainable use management. The cooperation and coordination between the State and Federal Governments have been vital, particularly in the area of enforcement. Live American alligators exported to another country would no longer benefit from the protection provided by this close relationship. The advice issued by the Office of Scientific Authority on November 4, 1997, concerning the export of live alligators from the United States that ''if alligator breeding facilities in other countries become competitively more successful (as might occur if production costs are lower) than alligator farms in the United States, prime alligator habitats will be vulnerable to other uses incompatible with the survival of the species. The fundamental premise of crocodilian ranching programs is the built-in incentive for habitat preservation by industries whose success is dependent upon perpetuation of natural habitats. It is this fact that has made crocodilian ranching around the world such a successful conservation approach within the CITES community of nations.''

Comment: One commenter was concerned that ''illegally-taken young domestic alligators could be smuggled and easily commingled with legally-obtained alligators or alligators produced on foreign farms.'' Regarding this possibility, another commenter stated that there are a number of examples where evidence indicated that ''demand for captive breeding stock has generated demand for illegally acquired specimens from the range states.'' One such report concerned the attempted illegal import of New Guinea crocodiles (*Crocodylus noveaguineae*) into Thailand.

Response: This possibility is of concern to the Service.

Comment: Four commenters specifically raised concerns over the loss of control if live American alligators are exported. The concerns included that the United States would have no ability to monitor re-export of specimens after initial export and that re-export controls would be less stringent than those of range countries which would further reduce effective international control over the management and trade in American alligators.

Response: The Service agrees. An export permit is issued based on the information provided by the applicant as to the purpose and destination of the shipment. Once the alligators are exported, the Service has no control over the re-export of the specimens to a different destination. The issuance of a re-export certificate is based only on whether the specimens were legally imported under CITES, not on whether the re-export would be detrimental to the survival of the species. Thus, even if the Service were able to make the determinations needed to issue an export permit to ship live American alligators to a country where introduction of exotic crocodilians is not considered a potential threat, it is impossible to know whether the animals will be subsequently shipped to a country or area within a country where introduction would be a real threat and where the Service might not have been able to find no detriment.

Comment: Eight of the commenters expressed concerns relative to accidental or deliberate introduction of alligators into areas outside their natural range. Even where there is no intention to release the animals and with the most secure facility, accidental release due to human error or natural disasters such as hurricanes remains a real possibility. The American alligator is the most temperate of the crocodilian species and is able to cope with frequent freezing temperatures. They are also generalists and opportunists in their feeding habits and able to adapt their diet to a wide variety of prey species. Given their reproductive potential, alligators are capable of rapidly expanding their populations. In areas already occupied by crocodilian species, the introduction of alligators could prove damaging, not only due to competition, but also by the introduction of exotic diseases. Such introductions would also impact prey species. Examples of documented introductions of crocodilians outside their natural range include: Spectacled caiman populations in southern Florida; Morelet's crocodile into the range of the American crocodile in western Mexico; and the common caiman on the Isle of Pines in Cuba which has had an impact on recovery of the endangered Cuban crocodile. One commenter stated that: ''The few examples we do have indicate that when introduced into a suitable habitat crocodilians can rapidly achieve dense populations which are virtually impossible to eradicate.''

Response: The Service agrees that this is a serious concern. Substantial information was provided to document the effects of species, especially crocodilian species, introduced into areas outside their natural range. The impacts are not only on other crocodilian species and prey species, but also on the ecosystem as a whole.

Comment: Six commenters had concerns that allowing the export of live American alligators would have a detrimental impact on the success of alligator management programs in the United States. These programs serve as an economic incentive to preserve the wetland habitats required for alligator conservation and that lack of economic incentives would adversely impact alligators as well as their habitat. The conservation benefits of alligator management programs are inextricably tied to economics. The concern in regard to conservation is where economic impacts negatively affect conservation programs. In this regard, there is concern that the establishment of breeding groups of alligators outside their natural range will result in a substantial loss of incentives for the conservation of alligator habitat. One commenter felt that range states have the strongest incentives for managing their own resources and that such management had conservation benefits and that use of natural resources by non-range states has no conservation benefit.

Response: The Service agrees that the alligator management programs in the United States have been very effective and that economic incentives are a factor in that success.

Comment: One commenter felt that his applications for export of live American alligators should not be regulated as a commercial shipment since the alligators were to be transported to a foreign facility only for their further care and maintenance. The commenter noted that he would be maintaining his full ownership rights in the specimens. In addition he felt that as long as State laws were complied with and an FWS import/export license was purchased each year, there should be no further restrictions on exports.

Response: The Federal Government has the jurisdiction, authority, and responsibility to ensure that exports of wildlife comply with Federal statutes, regulations, and international agreements as well as appropriate State law, and may place conditions on the export of such wildlife consistent with Federal law. An import/export license is required of all businesses importing and/or exporting wildlife, regardless of whether the proposed export involves a commercial activity. In addition to the license requirement, exporters planning

to export wildlife protected under the ESA and/or CITES must obtain a Federal export permit prior to export. The issuance of such permits is a Federal authority and responsibility. Most trade in American alligators has been in the skins, not in live animals. Permits continue to be issued for exports of properly tagged American alligator skins, and live animals may be sold within the United States in accordance with State law. The State has primary jurisdiction over the management and use of wildlife as long as it is within that State.

Comment: One commenter stated that since export permits for live American alligators had been issued in the past, the Service should continue to issue them.

Response: The Service is required to use the best scientific information available in making the required determinations for issuing export permits. When new or additional information is brought to our attention, the Service has an obligation to review that information and use it, as appropriate, in making future decisions on permit issuance. Because several entities contacted the Service concerning the impacts of live American alligator exports, it became our responsibility to seek out and evaluate all information available that would assist us in making the determinations required prior to permit issuance. If the information indicates persuasively that there are concerns that previously had not been considered, those concerns must be addressed.

Comment: One commenter felt that export of live American alligators should be allowed if the destination was not within the habitat of other crocodilians.

Response: The Service does not agree. Although the initial destination may not be within crocodilian habitat, as outlined previously, there is no assurance that the initial destination is the final destination. Additionally, although information was provided to the Service stating that one facility planning to receive American alligators was not within the habitat of other crocodilians, subsequent information has indicated that the facility is within the range of two endangered crocodilians, one of which was introduced into the area after escaping from a crocodilian farm.

Comment: One commenter stated that since a June 24, 1996, **Federal Register** final rule allowed the import of live Nile crocodiles into the United States, there should be no restrictions on the export of live American alligators.

Response: The Service disagrees. Since publication of the final rule on Nile crocodile imports, the Service has received a great deal of information concerning problems associated with the introduction of exotic species into this country as well as other countries. Therefore, the question of allowing the import of live, non-native crocodilians into the United States is being reviewed separately in the context of the Lacey Act prohibitions on import of injurious species. This is a related, but separate, issue that is currently under review.

Comment: One commenter stated that Florida farmed or ranched alligators are no longer considered wildlife under Florida rules and are ''considered as domestic livestock and personal property for use.'' As a result, there should be no additional requirements for commercial use of the alligators and that any additional requirements are a condemnation of a property right.

Response: Under Federal regulations, wildlife is defined as ''any wild animal, whether alive or dead * * * whether or not bred, hatched, or born in captivity, and including any part, product, egg, or offspring thereof.'' (50 CFR 10.12) Farmed or ranched alligators are still considered wildlife and subject to all applicable Federal laws and requirements (including CITES export permits). A ranching program such as those developed by the States of Florida and Louisiana relies on the availability of natural habitat where wild alligators can reproduce naturally. A certain number of the eggs and/or hatchlings are taken from the wild based on a formula to ensure sustainability of the harvest. The hatchlings are raised on a ''farm'' until the alligators are of a suitable size to harvest for their skins. The fact that these animals were raised under controlled conditions does not alter the fact that they are wildlife both under Federal law and in accordance with CITES. Alligator farmers may trade their property (live alligators, skins, or products) freely within the United States in accordance with State laws. International trade in such property is subject to Federal requirements, however , and such export restrictions that are applied for the conservation of domestic alligators and foreign crocodilians do not in any way affect the possession or use of such property in the United States. The proposed policy, if adopted, would not effect a taking of property without due process of law. Furthermore, the Service continues to issue CITES permits for the export of American alligator skins and products based on our ability to make the determinations required by CITES.

Comment: One commenter stated that ''It is a documented fact that alligators are notoriously poor breeders in captivity'' and that previous live American alligator exports have not resulted in commercial farming operations in any other countries.

Response: The Service disagrees. A permit to export 120 live American alligators to Israel was issued in 1981. It was issued with assurances from the Israeli CITES Management Authority that the alligators would not be commercialized and would be for exhibition only. In 1986, due to successful breeding the Israeli facility became overcrowded and 200 alligators were shipped to Florida. In October 1987, the requirement that the alligators not be commercialized was rescinded by the U.S. Federal Wildlife Permit Office. The Israeli facility stated in a letter to the Service that they did not expect their exports of skins to be more than approximately 200 skins per year. However, according to statistics obtained from the World Conservation Monitoring Centre, from 1989 to 1995 a total of 4,963 American alligator skins were exported from Israel (an average of 709 skins per year).

Comment: One commenter requested a public meeting.

Response: A public meeting will be held at the Delta Resort in Orlando, Florida, on Tuesday, May 5, 1998, from 1:30 p.m. to 3:30 p.m.

Required Determinations

This notice contains no information collection requirements beyond those already approved by the Office of Management and Budget under 44 U.S.C. 3506 and assigned Clearance Number 1018–0093 with an expiration date of February 28, 2001. The Service has determined that an environmental assessment is not necessary for this policy as it is a permit function categorically excluded under Part 516 of the Departmental Manual, Chapter 2. The policy reflects the Service's permit decisions based on existing requirements for no detriment findings and introduction of exotic species.

Proposed Policy

Purpose: The Service has been entrusted with certain responsibilities under the ESA and CITES regarding export of protected species and under Executive Order 11987 in regard to export of exotic species. The American alligator (*Alligator mississippiensis*) is one of the few native species included in CITES Appendix II for which we have received applications for export of live specimens for commercial breeding or resale purposes. Prior to issuance of

any CITES export permit, the Service must be able to determine that the specimens to be exported were legally acquired, that the export would not be detrimental to the species, and that live specimens will be prepared and shipped in a humane manner. To ensure that the Service carries out these responsibilities in a consistent manner, the Service will consider the issuance of permits for the export of live American alligators (*Alligator mississippiensis*) in the following context:

1. Applications for export permits for scientific research should include:

a. Formal research protocol with timetable;

b. Qualifications of the scientific personnel conducting the proposed research;

c. Description of the facilities where the specimens will be housed and precautions that will be taken to prevent escape; and

d. Plans for disposition of the alligators and any progeny upon completion of the research project.

2. Applications for export permits for zoological display should include:

a. A description of the receiving facility including the housing planned or in existence for the requested alligators and measures to be taken to prevent escape; and

b. Plans for disposition of the alligators and any progeny should the facility close or become overcrowded.

3. Applications for export permits for captive breeding or resale will not be accepted.

If adopted, this proposed policy would remain in place until further notice. If substantial new biological information is received, the basis for these findings would be reviewed.

Dated: May 1, 1998.

Jamie Rappaport Clark,

Director.

[FR Doc. 98–12292 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that amendment of the Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance, Resolution No. SR–1797–98, was duly adopted and certified by the Salt River Pima-Maricopa Indian Community Council on February 18, 1998. This Ordinance amends an earlier ordinance published in Volume 38 of the **Federal Register** at page 3416. This Ordinance provides for the regulation of the sale, possession and consumption of liquor within the Salt River Pima-Maricopa Indian Community, under the jurisdiction of the Salt River Pima-Maricopa Indian Community and is in conformity with the laws of the State of Arizona.

DATES: This Ordinance is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603-MIB, Washington, D.C. 20240–4001; telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Tribal Liquor Ordinance for the Salt River Pima-Maricopa Indian Community is to read as follows:

Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance

1. Preamble

(a) *Title.* This Ordinance shall be known as the Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance.

(b) *Authority.* This Ordinance is enacted pursuant to the Act of August 15, 1953. (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161) and Article VII of the Salt River Pima-Maricopa Indian Community Constitution.

(c) *Purpose.* The purpose of this Ordinance is to regulate and control the possession, consumption, and sale of liquor on the Salt River Pima-Maricopa Indian Community. The enactment of an ordinance governing liquor possession and sale on the reservation will increase the ability of the Community government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the Community government and the delivery of Community government services.

(d) *Application of 18 U.S.C. § 1161.* All acts and transactions under this Ordinance shall be in conformity with this Ordinance and in conformity with the laws of the State of Arizona as that term is used in 18 U.S.C. § 1161.

(e) *Effective Date.* This Ordinance shall be effective upon the date of its publication in the **Federal Register**.

2. Definitions

In this ordinance unless the context otherwise requires:

(a) *Alcoholic Beverages* means beer, wine or other spirituous liquor.

(b) *Community* means the Salt River Pima-Maricopa Indian Community.

(c) *License* means a license issued pursuant to the provisions of this ordinance.

(d) *Licensed Premises* or *Premises* means a place from which a licensee is authorized to sell alcoholic beverages under the provisions of this ordinance.

(e) *Licensee* means a person who has been authorized to sell alcoholic beverages for consumption at a particular premise by the Salt River Pima-Maricopa Indian Community.

(f) *Person* means a natural person or a corporation duly chartered by a jurisdiction within the United States.

(g) *Private Residence* means a place where an individual or a family maintains a habitation.

(h) *Public Place* means any place not a private residence and not licensed for the possession of alcoholic beverages.

(i) *Sell, Sold, Buy* shall include furnish, dispose of, give, receive or acquire.

3. Unlawful Acts

(a) It shall be unlawful for any person to deal with alcoholic beverages in any manner not allowed by this Ordinance or the regulations adopted under this Ordinance.

(b) It shall be unlawful for a licensee or other person to give, sell or cause to be sold or otherwise distribute alcoholic beverages to a person under the age of 21 years.

(c) It shall be unlawful to employ a person under the age of 21 years in any capacity connected with the handling of alcoholic beverages.

(d) It shall be unlawful for a person under the age of 21 years to buy, possess, or consume alcoholic beverages.

(e) It shall be unlawful for a licensee or an employee of a licensee to consume alcoholic beverages on or about the licensed premises during such periods such person is working at the licensed premises.

(f) It shall be unlawful for a licensee or any other person to sell alcoholic beverages to an intoxicated or disorderly person, or for a licensee or employee of a licensee to allow or permit an intoxicated or disorderly person to remain on the premises.

(g) It shall be unlawful for a licensee to sell alcoholic beverages in any

manner not provided for by this ordinance or the licensee's license.

4. Lawful Commerce With Alcoholic Beverages

(a) Alcoholic beverages may be possessed and consumed only at private residences and licensed premises, and may be transported in unbroken containers to such places.

(b) Alcoholic beverages may be sold at licensed premises only under the conditions under which the license is issued.

(c) The Community may from time to time issue licenses for the sale of alcoholic beverages subject to the provisions of this ordinance and the regulations adopted pursuant to this Ordinance.

5. Issuance of License, Regulation, Revocation, Fees, Hearings

(a) The Office of Alcohol Beverage Control (''Office'') is hereby established. The director of the Office will be the Alcohol Beverage Hearing Officer who will be responsible to the Community Manager and whose duties may be delegated from time to time to assistant hearing officers or other employees of the Office. All of the positions of the Office will be filled and will be conducted in accordance with the Community's established policies and procedures.

(b) *Regulations*—The Director of the Office shall propose for adoption by the Salt River Pima-Maricopa Indian Community Council regulations for the purpose of carrying out the provisions of this ordinance. Such regulations shall:

(1) Establish a procedure for application for license through the Office provision for public hearings before final decision by the Alcohol Beverage Hearing Officer;

(2) Provide uniform standards of qualification for licensees;

(3) Determine the information required to be supplied by applicants for license, and for the verification of such information. Applicants shall include in the case of a corporation, all shareholders of more than 5% of the corporate stock and all officers and directors of the corporation; and in the case of a partnership, all of the partners;

(4) Establish the fee for an application, renewal application and annual license provided that no such fee shall in the first year of this ordinance exceed $1,500.00 or increase more than 5% per annum thereafter;

(5) Establish hours within which premises may be open;

(6) Establish standards for operation of licensed premises and for the audit of records to be supplied to the Community;

(7) Establish classes of licenses for the sale of (i) all alcoholic beverages, (ii) only beer, (iii) only wine, or (iv) only beer and wine;

(8) Establish a procedure for revocation and suspension of licenses which will be administered by the Alcohol Beverage Hearing Officer.

(c) *Beverage restrictions*—Licenses may only be issued for premises operated under the following classifications as defined herein; and such licenses may be restricted to the sale of (i) all alcoholic beverages, (ii) only beer, (iii) only wine, or (iv) only beer and wine.

(d) *Designated area*—Licenses may be issued for premises located only on land described on the Designated Area Map attached to this ordinance and filed in the official records of the Community in the Office of the Secretary. Additional land may be described as within the ''Designated Area'' by the enactment by the Community Council of an ordinance amending the Designated Area Map.

(e) *Premises which may be licensed*—Licenses may only be issued for premises as defined in this subsection (e) or its subparagraphs.

(1) Hotel-Motel License

(i) The Alcohol Beverage Hearing Officer may issue a hotel-motel license to any hotel or motel that would qualify for a restaurant license under the terms of a restaurant license and/or for the operation of one or more bars in such hotel or motel provided that the applicant is otherwise qualified to hold a license.

(ii) The holder of a hotel-motel license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section ''Licensed Premises'' shall include all public bar rooms, public restaurant rooms and, private banquet rooms supplied by the hotel-motel restaurant.

(iii) Restaurant'' means an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

(2) Casino License

(i) The Alcohol Beverage Hearing Officer may issue a casino license to any casino authorized to operate as a casino by the Community.

(ii) The holder of a casino license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section ''licensed premises'' shall include all public bar rooms, gaming areas, private banquet or meeting rooms and restaurants and other food service facilities.

(3) Golf Course Club House License

(i) The Alcohol Beverage Hearing Officer may issue a Golf Course Club House license to any Golf Course Club House.

(ii) The holder of a Golf Course Club House license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises and only to patrons of the Golf Course Facility. For the purpose of this section ''licensed premises'' shall include all restaurant, bar and lounge facilities within the Golf Course Club House. For purposes of this section, a ''Golf Course Club House'' means a Club House located on a golf course.

(f) Issuance of Licenses, Hearings

(1) Licenses will be issued by the Director of the Office of Alcohol Beverage Control after a hearing and upon a determination by the Alcohol Beverage Hearing Officer that there has been a satisfactory showing of the capability, qualifications and reliability of the Applicant, and in the case of a corporation, its principal stockholders, offices and directors, and of a partnership, its partners, and that the public convenience requires and the best interests of the Community will be substantially served by the issuance of the license. The Salt River Pima-Maricopa Indian Community Police Department shall, at the request of the President of the Community and for the purposes of this subparagraph, do a criminal history background check qualification on any applicant for a license under this ordinance.

(2) The Alcohol Beverage Hearing Officer shall determine after a hearing has been held whether and under what conditions a license shall be issued. The hearing shall be announced by notice in the Community newspaper. Notice shall be given no less than l0 days prior to such hearing. The hearing shall be conducted by the Alcohol Beverage Hearing Officer in an informal manner with rules adopted pursuant to this ordinance calculated to assure full disclosure of all relevant information. Professional attorneys shall not be permitted to represent parties at any such hearing or hearings on appeal. The Alcohol Beverage Hearing Officer shall hear all relevant issues and within 5 days after the hearing is concluded shall issue a written decision. The decision will contain the findings of fact relied on by the Alcohol Beverage Hearing Officer for the decision as well as the decision. The findings of fact and

decision shall be filed with the Clerk of the Salt River Pima-Maricopa Indian Community Court and distributed within two (2) days after such filing to the applicant, any other person who files a notice of appearance with the Alcohol Beverage Hearing Officer before the hearing is adjourned, and the Secretary of the Salt River Pima-Maricopa Indian Community.

(3) A decision of the Alcohol Beverage Hearing Officer under Section 5(f)(1) and (2) and 5(g) may be appealed to the Salt River Pima-Maricopa Indian Community Court by the applicant, the Community, or any Community member who has filed a notice of appearance.

(4) Appeals shall be taken from any decision of the Alcohol Beverage Hearing Officer in the following manner:

(i) *Notice of appeal.* Written notice of appeal shall be given within ten (10) days after the day the written and executed decision is filed with the Clerk of the Salt River Pima-Maricopa Indian Community Court. The notice of appeal shall state all the grounds for appeal relied on by the appellant. The notice of appeal shall not be amended once it is filed. The appellee may file a short written response to the grounds for appeal within ten (10) days after the notice of appeal is filed. The notice of appeal and response shall be mailed to the opposing party on the day it is filed. If the appellant is the applicant for the license, the appellee shall in all cases be the Alcohol Beverage Hearing Officer. If the appellant is a person who filed a notice of appearance or the Community, the appellee shall in all cases be the applicant. In the event there is more than one Notice of Appeal filed, the appeals shall be consolidated by the Clerk and only one response shall be filed to the consolidated appeals.

(ii) *Costs.* There shall be posted with the Clerk of the Salt River Pima-Maricopa Indian Community Court a cash fee of $25.00 to cover court costs.

(iii) *Grounds for appeal.* The court shall determine the appeal upon the findings of fact and decision entered in the case by the Alcohol Beverage Hearing Officer.

(iv) *Findings of fact.* The findings of fact shall be presumed to be without reversible error. The presumption may be overcome by a sworn written statement presented to the court at the time of the filing of the notice of appeal which establishes on the basis of the statement, any one or more of the following grounds:

(A) That a witness ready and willing to testify at the time of the hearing on behalf of the appellant was not allowed by the Alcohol Beverage Hearing Officer to take the witness stand and testify, and such testimony would have materially altered the decision of the Alcohol Beverage Hearing Officer.

(B) That the Alcohol Beverage Hearing Officer refused to admit documentary or other physical evidence, and such evidence would have materially altered the decision of the Alcohol Beverage Hearing Officer.

(C) That after the hearing the appellant discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the hearing, and such evidence would have materially altered the decision of the Alcohol Beverage Hearing Officer. In the event the court finds the presumption is overcome pursuant to this subsection, the court shall remand the case back to the Alcohol Beverage Hearing Officer for the limited purpose of hearing only the excluded or new evidence and any evidence presented in rebuttal to such evidence. The hearing will be held within ten (10) days after the order of the court has been filed and served upon the appellants and appellee. At the conclusion of such remand hearing, the Alcohol Beverage Hearing Officer shall, within ten (l0) days of the hearing, make and enter such amended findings of fact and decision as the Alcohol Beverage Hearing Officer determines that the evidence adduced at the remand hearing requires. If the Alcohol Beverage Hearing Officer determines that the prior findings of fact requires no amendment, the Alcohol Beverage Hearing Officer will issue a decision reaffirming its prior findings of fact and decision. The findings of fact and decision will be transmitted to the court and such findings of fact and decision will not be subject to a separate appeal.

(v) *Decision.* The court shall determine whether the decision is supported by the findings of fact and the law. Any party to the case may request an opportunity to appear before the court prior to its decision to give the court such party's view of the case. The other party or parties shall be given adequate notice of the hearing and an opportunity to present such party's or parties' view of the case. Such views shall be presented orally by the parties or their advocates and shall only deal with the grounds relied on by the appellant as set out in the notice of appeal. The hearing shall be limited to one hour and the time will be equally divided between the appellant and the appellee. If the court finds that the decision is incorrect, it shall issue a new decision correctly stating the decision. Such decision shall be final and not subject to rehearing, review or appeal.

(5) *Records of application, permit and proceedings.* A complete record of all applications, actions taken thereon, and any licenses issued shall be maintained by the Community and shall be open for public inspection at the Office of Alcohol Beverage Control.

(g) Licenses shall be issued for a period of one year and are renewable on application to the Office of Alcohol Beverage Control which will renew on payment of renewal application fee and annual license fee.

(h) Licenses issued under this ordinance are non-transferable without the prior approval of the Alcohol Beverage Hearing Officer after the application process has been completed.

(i) The Office of Alcohol Beverage Control, the Department of Public Safety or the Community Manager may cite a licensee to appear before the Alcohol Beverage Hearing Officer for a revocation hearing upon allegations of violations under Section 2 hereof.

(j) Any license issued pursuant to this ordinance may be revoked or suspended after a hearing before the Alcohol Beverage Hearing Officer upon a finding that the licensee is operating the premises in violation of this ordinance or the regulations adopted pursuant to it, or the laws of the Community or that the license would not have been originally issued had the facts in evidence at the time of any revocation hearing been known at the time of the application for a license.

6. Scope of Ordinance

Except for Article I and III of Chapter l4 of the Code of Ordinances of the Salt River Pima-Maricopa Indian Community, this Ordinance constitutes the entire law of the Community in regard to the sale and/or distribution of alcoholic beverages within the Community.

7. Repeal of Ordinance

Article II of Chapter l4 of the Code of Ordinances of the Community is repealed.

Dated: April 28, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–12278 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–02–j

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Fifth Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding Class III gaming on the Northern Cheyenne Reservation which was executed on February 17, 1998.

DATES: This action is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: April 30, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–12261 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment II to the Amended Gaming Compact Between the Sisseton-Wahpeton Sioux Tribe and the State of South Dakota, which was executed on January 13, 1998.

DATES: This action is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs,Washington, D.C. 20240, (202) 219–4068.

Dated: April 30, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–12260 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–19155–4]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 120 acres. The lands involved are in the vicinity of Birch Creek, Alaska, within T. 19 N., R. 7 E. and T. 17 N., R. 11 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 8, 1998, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–12237 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–JA–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1150–00:G8–0170]

Prineville District; Cave Closure; Oregon

May 1, 1998.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that Stout Cave, Deschutes County, Oregon, is closed yearlong to all visitor use for a three-year period ending on May 1, 2001.

Effective immediately, Stout Cave, in Deschutes County, Oregon, is closed to *all* visitor use (caving, sport climbing, etc.) for a three-year period ending on May 1, 2001. The term ''cave'' applies to any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth and to any natural pit, sinkhole, or other feature which is an extension of the entrance. The term ''sinkhole'' applies to the area below the rim and extending to the cave's entrance. The purpose of this closure is to protect roosting western big-eared bats from human disturbance. This Special Status species is extremely sensitive to human disturbance. Also, this closure is necessary in order to determine the specific type and location of bat use in the absence of human disturbance. Current levels of human disturbance prevent further evaluation of bat use. Without this information, impacts to biota from current and proposed human uses at the cave cannot be analyzed. BLM cave management policy directs that protective measures, including cave closures, be implemented where known or potential adverse impacts to sensitive animals is present. Closure needs will be re-evaluated at the end of the three-year closure period. Exemptions to this closure will apply to administrative personnel for monitoring purposes; other exemptions to this restriction may be made on a case-by-case basis by the authorized officer. Exemptions could include approved research, essential search and rescue, and other emergency actions or administrative operations for the protection of cave resources. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

A more specific location of public lands under this closure order is not provided in order to protect sensitive cave resources. Cave locations are exempt from the Freedom of Information Act under the Federal Cave Resources Protection Act of 1988.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Cave Protection Specialist, BLM Prineville District, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416–6725.

SUPPLEMENTAY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: May 1, 1998.

James G. Kenna,

Deschutes Area Manager, Prineville District Office.

[FR Doc. 98–12194 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1610–00, 1616P]

Notice of Availability of the Draft Oil and Gas Supplemental Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the National Environmental Policy Act the Bureau of Land Management (BLM) has prepared a Draft Oil and Gas Supplemental Resource Management Plan and Environmental Impact Statement (RMP/EIS). This is a draft supplement to the 1992 Judith-Valley-Phillips RMP and is available to the public for a 90-day review period. The Draft Oil and Gas Supplemental RMP/EIS addresses two additional alternatives for oil and gas leasing on 3.4 million acres in northcentral Montana: Fergus, Petroleum, Judith Basin, Phillips, and Valley Counties and the southern portion of Chouteau County. One of the alternatives would avoid oil and gas leasing in areas with valuable wildlife habitat. The other alternative, the preferred alternative, would provide for oil and gas leasing while protecting other resource values through stipulations or closing areas where resource values are not compatible with exploration and development.

DATES: The agency must receive comments on or before August 6, 1998.

ADDRESSES: Address all comments to David L. Mari, District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457–1160.

Copies of the Draft Oil and Gas Supplemental RMP/EIS are available from the Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

Public reading copies will be available for review at the following Bureau of Land Management locations: Montana State Office, 222 North 32nd Street, Billings, Montana; Lewistown District Office, Airport Road, Lewistown, Montana; Phillips Resource Area, 501 S 2nd Street East, Malta, Montana: and Valley Resource Area, Hwy 2 W, Glasgow, Montana.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406–538–7461.

SUPPLEMENTARY INFORMATION: In September 1988, the National Wildlife Federation protested the issuance of oil and gas leases by the BLM in the State of Montana. The reasons for the protest were an inadequate analysis under the National Environmental Policy Act and non-compliance with the Endangered Species Act. The BLM's November 1988 decision on this protest was that BLM would suspend lease issuance on tracts with special wildlife stipulations until a new RMP/EIS was completed meeting the Bureau's supplemental program guidance.

In September 1988, the BLM issued a notice of intent to prepare an RMP/EIS for public lands in northcentral Montana. One of the issues identified for the RMP was oil and gas leasing. The draft Judith-Valley-Phillips RMP/EIS was released for public comment in July 1991. The National Wildlife Federation comments on the draft raised the concern that the November 1988 decision was not mentioned, much less identified as a practical alternative. The BLM responded to this comment in the final Judith-Valley-Phillips RMP/EIS that areas nominated for lease which require special stipulations to protect wildlife would not be offered for lease but this was an interim policy until the RMP/EIS was completed and not an alternative.

In December 1992 the BLM released the final Judith-Valley-Phillips RMP/EIS for a 30 day protest period. In January 1993, the National Wildlife Federation protested the final RMP/EIS because the document neither mentioned the 1988 decision nor identified an alternative of carrying the temporary arrangement forward to avoid leasing valuable wildlife habitat. After careful review of this issue by the BLM's Director the protest warranted a supplement to the final RMP/EIS addressing an alternative for oil and gas leasing that would avoid leasing valuable wildlife habitat.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712) and Sec. 102, Pub. L. 91–190, 83 Stat. 852 as amended (42 U.S.C. 4332))

Dated: April 27, 1998.

B. Gene Miller,

Associate District Manager.

[FR Doc. 98–12187 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–60470, UTU–69463]

Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases UTU–60470 and UTU–69463 for lands in Carbon County, Utah, was timely filed and required rentals accruing from April 1, 1998, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16–⅔ percent, respectively. The $500 administrative fee for each lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate leases UTU–60470 and UTU–69463, effective April 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 98–12211 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–370–1430–01, CA 15801, CAS 308, CAS 309, CA 6549, CAS 310]

Notice of Realty Action: Intent To Convey Lands for Landfill Purposes, Modoc County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent to convey lands for landfill purposes.

SUMMARY: The County of Modoc has requested that five landfills currently

leased from the Bureau of Land Management be patented to the County under the authority of the Recreation and Public Purposes Act of June 14, 1926, as amended. Pending the completion of the Environmental Assessment (EA) and the Landfill Transfer Audit (LTA), it is the intent of the Bureau of Land Management to convey the lands to the County of Modoc. The Intent to Convey involves the following lands located in the County of Modoc, California:

Federal Lands to be conveyed to the County of Modoc:

Mount Diablo Meridian, California

1. Cedarville: T 43 N, R 17 E,
   Sec. 34, Lot 3, 6, E½NE¼SW¼; CA 15801 containing 60.00 acres.
2. Eagleville: T 40 N, R 17 E,
   Sec. 21, NE¼SE¼ (within); CAS 308
3. Lake City: T 43 N, R 16 E,
   Sec. 3, N½NW¼ (within); CAS 309
4. Likely: T 39 N, R 13 E,
   Sec. 11, NE¼SW¼ (within); CAS 310
5. Davis Creek: T 45 N, R 14 E,
   Sec. 29, NE¼NE¼NE¼ (within); CA 6549

SUPPLEMENTARY INFORMATION: Conveyance is consistent with current BLM land use planning and is in the public interest. The County of Modoc is a qualified applicant for conveyance. Final determination of the Intent to Convey will be made using public comments, an Environmental Assessment (EA) and a Landfill Transfer Audit (LTA). The conveyance document (patent) for the Federal public lands will include the following terms, conditions or reservations to the United States:

1. ''A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).''

2. Provisions of the Recreation and Public Purposes (R&PP) Act and applicable regulations of the Secretary of the Interior.

3. All valid and existing rights documented on the official public land records at the time of patent issuance.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this Notice in the **Federal Register**, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mineral laws except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period of five years from the date of publication. The segregative effect shall terminate as provided by 43 CFR 2741.5(h)(2).

Detailed information concerning the Intent to Convey is available at the Alturas Resource Area Office, 708 West 12th Street, Alturas, CA, 96101 and Surprise Resource Area Office, 602 Cressler Street, CA 96104 or by contacting Jerry Wheeler at 530–233–4666 or Joe McFarlan at 530–279–6101. For a period of 45 days after the initial publication of this Notice in the **Federal Register**, interested parties may submit comments to the Alturas Field Manager, Alturas Field Office at the above address. Send comments to the Surprise Field Manager, Surprise Field Office at P.O. Box 460, Cedarville, CA 96104.

Any adverse comments will be reviewed by the California State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice in the **Federal Register**.

Susan T. Stokke,

Manager, BLM Surprise Field Office.

[FR Doc. 98–12282 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1610–00, 1617P]

Notice of Intent To Prepare a Land Disposal Plan Amendment for the Judith-Valley-Phillips and West HiLine Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will amend the Judith-Valley-Phillips and West HiLine Resource Management Plans (RMPs). The Bureau of Land Management is amending the RMPs to allow the disposal of small isolated tracts which were not specifically identified and listed in the RMPs. The public land being considered is located in Blaine, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Petroleum, Phillips, Toole, and Valley Counties, Montana. An environmental assessment will be prepared by the Lewistown District Office to analyze the impacts of this proposal and any alternatives.

DATES: Comments and recommendations on this notice to amend the Judith-Valley-Phillips and West HiLine RMPs should be received on or before June 8, 1998.

ADDRESSES: Address all comments concerning this notice to David L. Mari, District Manager, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406–538–7461.

SUPPLEMENTARY INFORMATION: The West HiLine (1988) and Judith-Valley-Phillips (1994) Resource Management Plans (RMP) identified specific parcels of public land for disposal. Under these RMPs, a plan amendment is required for any land exchange, or sale, that involves public land not specifically identified for disposal and listed in the RMPs no matter how small and insignificant the sale or exchange. Over the past seven years this has required six plan amendments to complete eight minor land sales exchanges which ranged in size from 20 to 382 acres. The purpose of each amendment was to dispose of small isolated tracts that were not identified in the RMPs, but upon closer examination did meet disposal criteria. Completing this plan amendment would allow the BLM the option, and flexibility, to identify additional disposal tracts in the future, provided they meet the disposal criteria and the management objectives in the RMPs. Under the plan amendment, additional disposal tracts would not be identified for major land exchanges that do not meet RMP objectives.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712))

Dated: April 29, 1998.

M. James Feist,

Acting District Manager.

[FR Doc. 98–12272 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan / Draft Environmental Impact Statement, Marsh-Billings National Historical Park, Vermont

AGENCY: National Park Service Interior.

ACTION: Notice of availability of Draft General Management Plan/Draft Environmental Impact Statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, this notice announces the availability for public review of a Draft General Management Plan/Draft Environmental Impact Statement for Marsh-Billings National Historical Park, Windsor County, Vermont. In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan.

The Draft General Management Plan/Draft Environmental Impact Statement presents a Proposal and a Management Alternative, then assesses the potential environmental and socioeconomic effects of the actions presented on site resources, visitor experience, and the surrounding area. The Proposal and the Alternative differ in their approaches to management. The Proposal calls for a strong partnership between the Woodstock Foundation, Inc. (which operates Billings Farm & Museum, located on private property within the park boundary), and the National Park Service to manage the park. The Alternative describes how the park could operate if these two organizations worked independently.

DATES: The formal public review period is to start on or about May 8, 1998, for 60 days (watch for Environmental Protection Agency **Federal Register** Notice on May 8). Two public forums will be held during the month of May. The dates, times, and location of the two public forums will be advertised in local media outlets.

SUPPLEMENTARY INFORMATION: Copies of the document will be available for review at the following locations:

Marsh-Billings National Historical Park, 54 Elm Street, Woodstock, VT 05091
Woodstock Town Hall, Woodstock, Vermont
Norman Williams Public Library, Woodstock, Vermont

To request copies of the document, please call (802) 457–3368 ext. 14, fax (802) 457–3405, or write to the Superintendent, Marsh-Billings National Historical Park, PO Box 178, Woodstock, VT 05091.

Comments on the Draft General Management Plan/Draft Environmental Impact Statement should be submitted to Rolf Diamant, Superintendent, Marsh-Billings National Historical Park, PO Box 178, Woodstock, VT 05091. You can also fax your comments to the Superintendent at (802) 457–3405.

Dated: April 23, 1998.

Rolf Diamant,

Superintendent, Marsh-Billings National Historical Park.

[FR Doc. 98–12243 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statements; Availability, Etc: Natchez Trace Parkway, MS Southern Terminus

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement for the Southern Terminus of the Natchez Trace Parkway, Mississippi.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the Southern Terminus (Section 3X) of the Natchez Trace Parkway.This notice also announces the intention to hold public meetings for the purpose of receiving comments about the draft EIS.

DATES: Comments on the draft EIS should be received no later than July 7, 1998. Public meetings will be held in Natchez, MS, and Jackson, MS. The dates and times of the public meetings will be announced in local media in those cities, but they will be held no sooner than 30 days following the publication of this announcement in the **Fedeal Register.**

ADDRESSES: Comments on the draft EIS shall be submitted to: Superintendent Wendell A. Simpson, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38801, (601) 680–4004.

The locations of the public meetings will be announced in the local media in the cities where they will be held.

Public reading copies of the EIS will be available for review at the following locations:

1. Natchez Trace Parkway Headquarters, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38801, (601) 680–4005
2. Natchez National Historical Park, 504 S. Canal Street, Natchez, Mississippi 39120, (601) 442–7047
3. Judge George W. Armstrong Library, 220 South Commerce Street, Natchez, Mississippi 39120, (601) 445–8862
4. Jackson/Hinds Library System, Eudora Wetly Library, 300 North State Street, Jackson, Mississippi 39201, (601) 968–5809. (This is the Headquarters or main library in Jackson.)

A limited number of copies of the draft EIS are also available from the office of the Superintendent, Natchez Trace Parkway.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement for the Southern Terminus (Section 3X) of the Natchez Trace Parkway presents a proposal and two alternative locations for the Southern Terminus of the Natchez Trace Parkway. The parkway in this region currently ends at U.S. Highway 61, about 7.5 miles east of the city of Natchez. An unopened section of the parkway has been partially constructed from U.S. Highway 61 to U.S. Highway 84/98, about 3.6 miles east of the Natchez city limits.

Alternative 1, the no action alternative, would construct an interchange at U.S. 84/98 and make that point the southern terminus of the parkway. The proposal, alternative 2, would extend the parkway another 4.2 miles from U.S. 84/98 toward Natchez to terminate at Liberty Road, where an interchange would be constructed. Alternative 3 would expend the parkway about 4.3 miles from U.S. 84/98 to terminate with an interchange at Seargent Prentiss Drive. Alternative 3 is the only alternative which would not require the acquisition of some additional property. In every alternative, parkway users would exit the parkway and utilizing existing city streets to reach the city center or other locations in Natchez. The EIS evaluates the potential environmental impacts associated with the three terminus locations and their associated parkway routing alternatives.

Dated: April 29, 1998.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 98–12241 Filed 5–7–98; 8:45 am]

BILLING CODE 3210–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Joshua Tree National Park Advisory Commission (Commission) will be held from 9:00 a.m. (PDT) until 3:00 p.m. on Saturday, June 13, 1998, at the Helen Gray Center, on Whitefeather Drive in the village of Joshua Tree, California. The Commission will hear presentations on issues related to the Backcountry and Wilderness Management Plan, which serves as an amendment to the General Management Plan for Joshua Tree National Park, and will develop Commission by-laws.

The Advisory Commission was established by Pub. L. 103–433, section 107 to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan for Joshua Tree National Park.

Members of the Commission include:

Mr. Chuck Bell—Planner
Ms. Diane Benson—Town of Yucca Valley
Ms. Cyndie Bransford—Recreational Climbing
Mr. Gary Daigneault—Property Owner
Hon. Kathy Davis—County of San Bernadino
Mr. Brian Huse—Conservation

Mr. Michael McCormack—Property Owner
Mr. Julian McIntyre—Conservation
Mr. Roger Melanson—Homeowner
Mr. Ramon Mendoza—Native American Interest
Ms. Leslie Mouriquand—Planner
Mr. Richard Russell—All Wheel Drive Vehicle Interest
Dr. Byron Walls—Mining Interest
Hon. Roy Wilson—County of Riverside
Mr. Gilbert Zimmerman—Tourism

Included on the agenda for this public meeting will be:

Discussion of the Backcountry and Wilderness Management Plan
- designation of a trail system
- designation of unpaved roads
- climbing management
- roadside auto camping
- major artificial water sources for wildlife
- area closures
- establishment of group size limits
- implementation of the Department of the Interior's Desert Tortoise Recovery Plan

Development of Commission by-laws

The meeting is open to the public and will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies, please contact Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92272 at (760) 367–5502.

Dated: April 24, 1998.

Ernest Quintana,

Superintendent.

[FR Doc. 98–12242 Filed 5–7–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 10–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, May 22, 1998, 9:30 a.m.

SUBJECT MATTER: Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

1. Claim No. ALB–042 Xhani Femera, et al.
2. Claim No. ALB–072 Thomas M. Toma.
3. Claim No. ALB–092 Thanas A. Laske.
4. Claim Nos. ALB–137 Klementina Sevo, ALB–138 Marianthi Fili.
5. Claim No. ALB–153 Bibi Xhemal Bejleri.
6. Claim No. ALB–173 Marigo Vasiliades, et al.
7. Claim No. ALB–187 Helena Liolin.
8. Claim No. ALB–203 Stavri G. Buri.
9. Claim No. ALB–220 Gjergji Gjeli.
10. Claim No. ALB–293 Jorgo Stoli.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, May 6, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–12420 Filed 5–6–98; 12:25 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; application for suspension of deportation or special rule cancellation of removal (Pursuant to Section 203 of Public Law 105–100).

The Department of Justice, Immigration and Naturalization Service (INS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 7, 1998.

Section 203 of Public Law 105–100, the Nicaraguan Adjustment and Central American Relief Act (NACARA), allows certain individuals to apply for suspension of deportation or cancellation of removal under special rules. This information collection is contained in the NACARA legislation which is being implemented by proposed rulemaking. The regulation allows many of these individuals to affirmatively apply for the benefit of suspension of deportation or special rule cancellation of removal with the INS.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 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:* New collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100).

(3) *Agency from number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–881. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, a well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for the INS to determine if it has jurisdiction over an individual applying for this benefit under section 203 of Public Law 105–100.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300,000 responses at 5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: 1,500,000 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, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 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, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 4, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–12230 Filed 5–7–98; 8:45 am]

BILLING CODE 4410–18–M

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 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 cause procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes 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 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.

Modifications to General Wage Determination Decisions

The number of decisions listed in 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:

None.

Volume III:

None.

Volume IV:

None.

Volume V:

None.

Volume VI:

None.

Volume VII:

None.

General Wage Determination Publication

General wage determinations 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.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 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 seven 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 are distributed to subscribers.

Signed at Washington, D.C. this 1st day of May 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–11984 Filed 5-7-98; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Training Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the submission of training plans as addressed in 30 CFR 48.3 and 48.23. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before July 7, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, *et seq.* (Mine Act), recognizes that the role of education and training in the improvement of miner health and safety is an important element of federal efforts to make the nation's mines safer places in which to work. Section 115(a) of the Mine Act states that ''each operator of a coal or other mine shall have a health and safety program which shall be approved by the Secretary.'' Title 30, C.F.R. §§ 48.3 and 48.23 specifically address the requirements for training plans. The standards are intended to ensure that miners will be effectively trained in matters affecting their health and safety, with the ultimate goal being the reduction of frequency and severity of the injuries in the nation's mines.

II. Current Actions

Approved training plans are used to implement training programs for training new miners, training newly employed experienced miners, training miners for new tasks, annual refresher training, and hazard training. The plans are also used by MSHA to ensure that all miners are receiving the training necessary to perform their jobs in the safest manner possible.

Type of Review: Extension

Agency: Mine Safety and Health Administration.

Title: Training Plans—30 C.F.R. §§ 48.3 and 48.23

OMB Number: 1219–0009.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hrs)	Burden (hrs)
48.3 and 48.23	1,300	Annually	1,300	8	10,400
Totals	1,300	Annually	1,300	8	10,400

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintaining: $2,600.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 1, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–12274 Filed 5–7–98; 8:45 am]

BILLING CODE 4510–43–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–5]

Increase of Statutory and Other Copyright Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearings.

SUMMARY: The Copyright Office of the Library of Congress will conduct a public hearing on increasing statutory and other copyright filing fees in accordance with technical amendments to the copyright law (Pub. L. 105–80, 111 Stat. 1529 (1997)). The Office will issue a more detailed Notice of Information proposing specific fees several months before the public hearing in order to give an interested party time to file a written comment and/or notify the Office that he or she wishes to participate in the public hearing.

DATES: The hearing will be held on Thursday, October 1, 1998, beginning at 10:00 a.m. Additional hearing dates will be announced if necessary.

ADDRESSES: The hearing will be held in the Library of Congress, James Madison Memorial Building, Dining Room A, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel at (202) 707–8380.

Dated: May 4, 1998.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 98–12131 Filed 5–7–98; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: May 26–27, 1998; 8:00 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–12198 Filed 5–7–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information Intelligent Systems(1200).

Date and Time: May 28–29, 1998 8:30 am–5:00 pm.

Place: The Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr, Gary Strong, Acting Deputy Division Director National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Computation and Social Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 5, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–12197 Filed 5–7–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–352]

Philadelphia Electric Company; Limerick Generating Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–39, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Unit 1, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the implementation of a plant modification to support the installation of replacement suction strainers for the emergency core cooling systems (residual heat removal and core spray) pumps at LGS, Unit 1.

The proposed action is in accordance with the licensee's application for amendment dated October 6, 1997, as supplemented by letter dated February 2, 1998.

The Need for the Proposed Action

On May 6, 1996, the NRC issued NRC Bulletin 96–03, ''Potential Plugging of Emergency Core Cooling Suction Strainers by Debris in Boiling Water Reactors'', that requested addressees to implement appropriate procedural measures and plant modifications to minimize the potential for clogging of emergency core cooling system (ECCS) suppression pool suction strainers by debris generated during a loss-of-coolant accident (LOCA) and requested that addressees report to the NRC whether they intend to implement the requested actions.

In response to the above cited bulletin, the licensee proposed a plant modification to install replacement suction strainers in the emergency core cooling (ECCS) pumps. The replacement strainer surface areas, which are substantially larger than the currently installed strainers, are required to reduce potential strainer clogging due to debris in the suppression pool following a postulated loss-of-coolant accident.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the installation of the replacement strainers in the ECCS pumps reduces potential strainer clogging due to debris in the suppression pool following a loss-of-coolant accident and does not change the manner in which the plant is being operated or the environmental impacts of operation. The proposed action involves features entirely within the protected area as defined in 10 CFR Part 20.

The change will not increase the probability or consequences of

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or collective occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on April 10, 1998, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 6, 1997, as supplemented by letter dated February 2, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate 1–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12280 Filed 5–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG—1625]

Permanently Defueled Westinghouse Plant; Proposed Standard Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1625, ''Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants,'' a draft report for comment dated March 1998.

DATES: Submit comments by August 6, 1998.

ADDRESSES: Draft NUREG–1625 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555-0001. A free single copy of draft NUREG–1625 may be requested by writing to U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael Webb, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–1347.

SUPPLEMENTARY INFORMATION: Given the number of nuclear power plants that have permanently shutdown, the NRC has recognized the need for generic guidance on appropriate Technical Specifications for permanently shutdown power reactors.

This NUREG report describes the NRC staff's proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants (STS PDW). The report includes a detailed discussion of the strategy followed for determining the contents of the STS PDW. The proposed STS PDW is being published to provide the general public and the nuclear community with an opportunity for comment.

The contents of the proposed STS PDW are based primarily on the Standard Technical Specifications, Westinghouse Plants (NUREG–1431, Revision 1, April 1995), which in turn were based on the criteria in the NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors (SECY–93–067, 58 FR 39132; July 22, 1993). The proposed STS PDW reflect the experience gained in the development of the Permanently Defueled Technical Specifications (PDTS) for the Trojan Nuclear Plant, the first PDTS approved by the NRC that were based on the improved STS for Westinghouse Plants. As licensees begin to plan permanent shutdown of their nuclear power plants, they are encouraged to adopt the STS PDW to an extent that is practical and consistent with their licensing basis.

Dated at Rockville, Maryland, this 1st day of May 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12275 Filed 5–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456, STN 50–457; STN 50–454, STN 50–455; 50–237, 50–249; 50–373, 50–374; 50–254, 50–265; And 50–295, 50–304 License Nos. NPF–72, NPF–77; NPF–37, NPF–66; DPR–19, DPR–25; NPF–11, NPF–18; DRP–29, DPR–30; And DPR–39, DPR–48]

Commonwealth Edison Company; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated March 25, 1998, the National Whistleblower Legal Defense and Education Fund and Mr. Randy Robarge (the Petitioners) have requested that the U.S. Nuclear Regulatory Commission (NRC) take immediate corrective action and imposition of civil penalties against Commonwealth Edison Company (ComEd).

As grounds for their request, the Petitioners assert that (1) ComEd's assertion in a pleading in a case before the U.S. Department of Labor, 98-ERA–2, that the filing of a ''Problem Identification Form'' (PIF) does not constitute protected activity fosters an atmosphere of intimidation and chills

the reporting of safety concerns in violation of 10 CFR 50.7, and (2) ComEd intentionally imposed ''restrictive confidentiality'' aimed at prohibiting employees from providing information to the NRC in violation of 10 CFR 50.7.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation. The Petitioners' request for immediate action was denied by letter dated April 29, 1998.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, DC 20003–1527.

Dated at Rockville, Maryland, this 29th day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12276 Filed 5–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Publication of Draft Commission Paper ''Combined License Review Process''

The U.S. Nuclear Regulatory Commission (NRC) has issued a draft version of a Commission paper entitled ''Combined License Review Process'' and is requesting public comments on this paper. Subpart C of 10 CFR part 52 presents a process for issuing combined licenses (COLs) for nuclear power facilities. A COL is a single license authorizing construction and conditional operation of a nuclear power facility. This draft paper informs the Commission about the NRC staff's positions on a number of issues relating to the COL review process, including: contents of a COL application; COL inspections, tests, analyses, and acceptance criteria (ITAAC); ITAAC for emergency plans; verification of ITAAC; role of the quality assurance program in ITAAC; and emergency plans for early site permits.

An earlier version of the draft paper was issued in April 1993. The NRC received comments from the nuclear industry (NUMARC) on this paper. As a result, several changes were made to the draft paper. The most significant of these changes include; removing a proposed license condition regarding detailed design drawings, removing any mention of hold points in the construction inspection process, revising the format of the sample license, and shortening the duration of a combined license to conform with the Atomic Energy Act of 1954, as amended. An amendment to the Atomic Energy Act has been proposed to correct the COL duration issue.

A copy of the draft paper has been placed in NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20037, for review by interested persons. Questions and comments should be directed to Jerry N. Wilson, Mail Stop O–10 D22, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Email:jnw@nrc.gov or telephone: 301–415–3145. Comments should be submitted within 120 days of the publication of this notice.

Dated at Rockville, MD, this 1st day of May 1998.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Standardization Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12279 Filed 5–7–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23168; 812–10598]

Dean Witter Select Equity Trust, et al.; Notice of Application

May 1, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(F)(ii) and 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit a trust of funds relying on section 12(d)(1)(F) to offer units with a sales load in excess of the 1.5% limit in section 12(d)(1)(F)(ii) of the Act. In addition, the requested order would permit a terminating series of the trust to sell certain fund shares and fixed income securities issued by the United States government (''Treasuries'') to a new series of the trust.

APPLICANTS: Dean Witter Reynolds Inc. (the ''Sponsor'' or ''Dean Witter''); Dean Witter Select Equity Trust and Dean Witter Select Investment Trust (collectively, the ''Trusts''); and certain subsequent series of the Trusts sponsored by Dean Witter (each, a ''Trust Series'').

FILING DATES: The application was filed on March 27, 1997, and amended on October 15, 1997. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

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 May 26, 1998, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Two World Trade Center, New York, New York 10048. Attention: Steven M. Massoni.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Each Trust Series will be a series of one of the Trusts, each a unit investment trust (''UIT'') registered under the Act. Dean Witter will be the sponsor of each Trust Series.

2. The Sponsor intends to offer certain Trust Series based on an asset allocation model. The portfolio of each Trust Series will contain a different asset allocation of shares of one or more open-end investment companies or series thereof, none of which will be an affiliated person of applicants (the ''Funds''), and, in some cases, Treasuries. The shares of the Funds will be deposited in each Trust Series at the shares' net asset value and the Treasuries will be valued by an independent evaluator (the ''Independent Evaluator''), who will be a ''qualified evaluator'' as defined in rule 22c–1(b)(2) under the Act, based on the Treasuries' offer-side valuation.

3. Simultaneously with the deposit of Fund shares and Treasuries and/or cash with instructions to the Trust's trustee (the ''Trustee'') to purchase the securities, the Trustee will deliver to the Sponsor a certificate or receipt for units (''Units'') representing the entire ownership of the Trust Series. The Units will be offered at prices based upon the aggregate underlying value of the Fund shares and Treasuries, plus a sales charge. The sales charge imposed on the Units will not, when aggregated with any sales charge or service fees paid by the Trust Series with respect to shares of the underlying Funds, exceed the limits set forth in rule 2830(d) of the National Association of Securities Dealers' (''NASD'') Conduct Rules. A Trust Series may invest in a Fund with an asset-based sales charge, provided that any asset-based sales charge received by the Sponsor or the Trustee from a Fund will be rebated to the Trust Series. Although a Trust Series may invest in a Fund with an asset-based sales charge greater than .25% of the Fund's average net assets, if any of the asset-based sales charge is received by the Sponsor or the Trustee as a Fund distribution expense, that amount will not be retained by the Sponsor or the Trustee but will be paid to the Trust Series for the benefit of the Trusts' unitholders.

4. Each Trust Series will terminate approximately one year after it is offered for sale (''Rollover Series''). At that time, the Sponsor intends to create and offer a new Trust Series (''New Trust Series''), the portfolio of which will reflect the then current asset allocation model for the corresponding Trust Series. Investors in the Rollover Series may elect to invest in the New Trust Series.

5. In order to minimize the potential for overreaching, Dean Witter will certify in writing to the Trustee, within five days of each sale of securities from a Rollover Series to a New Trust Series: (a) that the transaction is consistent with the policy of both the Rollover and New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the price determined by the Independent Evaluator for the sale date of the Treasuries. The Trustee will then countersign the certificate, unless, in the event that the Trustee disagrees with the price listed on the certificate, the Trustee immediately informs Dean Witter orally of any such disagreement and returns the certificate within five days to Dean Witter with corrections duly noted. Upon Dean Witter's receipt of a corrected certificate, Dean Witter and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, published list of prices for the date of the transaction.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company, and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days.

3. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit a Trust Series to offer Units with a sales load in excess of the 1.5% limitation. For the reasons below, applicants believe that the requested relief meets the standards of section 12(d)(1)(J).

4. Applicants argue that section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires sharing of another investment company, including the excessive layering of sales charges. For the reasons stated below, applicants do not believe that their proposal will result in excessive sales charges.

5. While each Trust Series will charge a sales load, the Sponsor will deposit the Fund shares at net asset value (*i.e.*, without any sales charge). To further limit the extent to which unitholders may pay indirectly for distribution costs of the underlying Funds, any asset-based sales charges received by the Sponsor of the Trustee from a Fund with regard to the Fund shares will be rebated to the Trust Series. In addition, applicants have agreed as a condition to the relief that any sales charge assessed with respect to the Units of a Trust Series, when aggregated with any sales charge or service fees paid by the Trust Series with respect to securities of the underlying Funds, will not exceed the limits set forth in rule 2830(d) of the Conduct Rules of the NASD. As a result, the aggregate sales charges will not exceed the limit that otherwise could be charged at any single level.

6. Applicants believe that it is appropriate to apply the NASD's rules to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants further believe that the condition subjecting any sales charges or service fees to the limits established by the NASD will provide ongoing regulation with the flexibility to accommodate continuing developments in the industry.

7. Administrative fees may be charged at both the Trust Series and underlying Fund levels. Applicants believe, however, that certain expenses of the Trusts may be reduced under the proposed arrangement. For example, when a Trust Series invests in Fund shares (whose net asset value is readily available), applicants anticipate that the evaluator would charge a lower fee, if any at all.

8. Applicants assert that the proposal will benefit potential unitholders as well as shareholders of the Funds. Applicants believe that a Trust Series provides a simple means through which investors can obtain a professionally selected and maintained mix of investment company shares in one package and at one sales load for a relatively small initial investment. In addition, applicants believe that purchasing shares in large quantities will enable a Fund to obtain certain economies of scale, and will benefit certain Funds by permitting them to carry a Trust Series on their books as a single shareholder account, even though there are numerous unitholders, and by providing them with a stable net asset base.

B. Section 17

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control are considered affiliates of one another. The Trust Series may be deemed to be under common control

because they have Dean Witter as a sponsor and, therefore, unable to sell and buy securities to and from each other without an exemption from section 17(a). Accordingly, applicants request relief to permit a Rollover Series to sell Fund shares and Treasuries to a New Trust Series.

2. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

3. Rule 17a–7 under the Act p[permits registered investment companies that might be deemed affiliates solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (b) and (e).

4. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures for these transactions to assure compliance with the rule. Since a UIT does not have a board of directors, there can be no board review of the transaction. Applicants state, however, that review in the context of a UIT would serve little useful purpose in connection with Fund shares and Treasuries because independently verifiable prices are readily available.

5. Paragraph (b) of rule 17a–7 requires that the transactions be effected at the independent current market price of the security. The Fund shares and Treasuries would fall within the paragraph (b)(4) category of ''all other securities,'' for which the current market price under rule 17a–7(b) is the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.

6. With respect to Fund shares, applicants state that Fund shares do not trade at a bid or offer price but at an independently determined net asset value. Applicants state that the Funds' shares will be issued by investment companies that will not be affiliated with the Sponsor and that each Fund will calculate the net asset value of its shares daily. The net asset value would be the price at which the Rollover Series would sell Fund shares to the New Trust Series.

7. With respect to Treasuries, applicants state that the Treasuries would be sold by a Rollover Series to a New Trust Series at the Treasuries' offer-side evaluation. Other Treasuries acquired by the New Trust Series will be acquired at the offer-side evaluation and the New Trust Series would be valued during the Trusts' initial offering period based on the Treasuries' offer-side evaluation. Applicants state that, therefore, there will be uniformity as to price for all of the Treasuries evaluated (both Treasuries bought in the market and Treasuries purchased from a Rollover Series). In addition, all unitholders of the New Trust Series, both unitholders from a Rollover Series and new unitholders, will acquire Unites with a value based on the offer-side evaluation of the Treasuries, which applicants state is consistent with the Trusts' acquisition cost.

8. Applicants believe that engaging in transactions for securities for which market quotations are readily available at an independently determined price will not disadvantage either Trust Series. Applicants state that the sales between Trust Series will reduce transaction costs to unitholders of the Trust Series and will reduce costs to the Fund. In addition, applicants state that the purchases and sales between Trust Series will be consistent with the policy of each Trust Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Trust Series will be involved in the proposed transactions.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to Units of a Trust Series, when aggregated with any sales charges or service fees paid by the Trust Series with respect to securities of the underlying Funds, will not exceed the limits set forth in rule 2830(d) of the NASD's Conduct Rules.

3. Each sale of Fund shares between the Trust Series will be effected at the net asset value of the Fund shares as determined by the Fund on the sale date. Each sale of Treasuries between the Trust Series will be effected at the Treasuries' offer-side evaluation as determined by an Independent Evaluator as of the evaluation time on the sale date. Such sales will be effected without any brokerage charges or other remuneration except customary transfer fees, if any.

4. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Trust Series.

5. The Trustee of each Rollover Series and New Trust Series will (a) review the procedures relating to the sale of securities from a Rollover Series and the purchase of securities for deposit in a New Trust Series and (b) make changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a), (c), and (d) of rule 17a–7.

6. A written copy of these procedures and a written record of each transaction pursuant to the requested order will be maintained as provided in rule 17a–7(f).

7. No Trust Series will acquire securities of an underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12265 Filed 5–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Homestead Village Incorporated, Common Stock, $.01 Par Value) File No. 1–12269

May 4, 1998.

Homestead Village Incorporated (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and

registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the New York Stock Exchange, Inc. (''NYSE'') pursuant to a Registration Statement Form 8–A that became effective on March 26, 1998. Trading in the Security on the NYSE commenced on April 1, 1998, and concurrently therewith the Security was suspended from trading on the Amex.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Exchange and by setting forth in detail to the Exchange the facts and reasons supporting the proposed withdrawal. The Company decided to withdraw its Security from listing and registration on the Amex, because of the Security's listing and registration on the NYSE.

By letter dated March 27, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before May 26, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12210 Filed 5–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pope Resources, A Delaware Limited Partnership, Depositary Receipts (Units)) File No. 1–9035

May 4, 1998.

Pope Resources, A Delaware Limited Partnership (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Exchange since December 6, 1995, and has been approved for quotation on the NASDAQ National Market System (''NASDAQ'') since July 16, 1991.

The Company has complied with Exchange Rule 3.4(b) by filing with the Exchange a certified copy of the resolution adopted by the Company's Board of Directors authorizing the delisting of the Security from the PCX and a letter setting forth in detail the reasons for the proposed delisting and facts in support thereof. In deciding to withdraw the Security from listing and registration on the PCX, the Company considered the costs and expenses of maintaining the dual listing of its Security on the PCX and the NASDAQ. The Company sees no advantage in the dual trading of its Security and believes that the dual listing has fragmented the market for its Security and has created arbitrage opportunities that have led to instability in the price of the Company's Security. There have often been significant differences in the price at which the Security trades in one market as opposed to the other, which has been exacerbated due to how thinly the Security is traded on the PCX.

By letter dated March 16, 1998, the Exchange informed the Company that it had approved the company's request to be removed from listing and registration on the PCX.

The Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before May 26, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12209 Filed 5–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39944; File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07]

Self-Regulatory Organizations; The Municipal Securities Rulemaking Board; The National Association of Securities Dealers, Inc.; and The New York Stock Exchange, Inc.; Order Extending Comment Period for Proposed Rule Changes Regarding Confirmation and Affirmation Services

May 1, 1998.

Recently, the Municipal Securities Rulemaking Board (''MSRB''), The National Association of Securities Dealers, Inc. (''NASD''), and the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] concerning amendments to their rules regarding confirmation and affirmation services.[2] Notices of the proposals were published in the **Federal Register** on April 13, 1998.[3]

The notices of the proposals state that comments on the proposals should be received by May 4, 1998. The Commission has received a request that the comment period for the proposals be

[1] 15 U.S.C. 78s(b)(1).

[2] On February 18, 1998, the NYSE filed its proposed rule change with the Commission (File No. SR–NYSE–98–07). On March 5, 1998, the NASD filed its proposed rule change with the Commission (File No. SR–NASD–98–20). On April 3, 1998, the MSRB filed its proposed rule change with the Commission (File No. SR–MSRB–98–06).

[3] Securities Exchange Act Release Nos. 39830 (April 6, 1998), 63 FR 18060 (NYSE); 39831 (April 6, 1998), 63 FR 18057 (NASD); 39833 (April 6, 1998), 63 FR 18055 (MSRB).

extended for thirty days from May 4, 1998, to June 3, 1998.[4] The Commission finds that extending the comment period is appropriate in order to give interested persons additional time to comment on the matters that the proposals address.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the comment period for the proposed rule changes of the NYSE (File No. SR–NYSE–98–07), the NASD (File No. SR–NASD–98–20), and the MSRB (File No. SR–MSRB–(98–06) be and hereby is extended from May 4, 1998, to June 3, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12263 Filed 5–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39942; File No. SR–NASD–98–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Standards for Individual Correspondence

May 1, 1998.

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 April 6, 1998, the NASD Regulation, Inc. (''NASDR'') 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 NASDR. On April 30, 1998, the NASDR filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR proposes to amend Rule 2210 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to require that written or electronic communications prepared for a single customer be subject to the general standards and those specific standards of Rule 2210 that prohibit misleading statements.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) Definitions—*Communications with the public shall include:*

(1) Advertisement—For purposes of this Rule and any interpretation thereof, ''advertisement'' means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), electronic of other public media.

(2) Sales Literature—For purposes of this Rule and any interpretation thereof, ''sales literature'' means any written or electronic communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of ''advertisement.'' Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(3) Correspondence—For purposes of this Rule and any interpretation thereof, ''correspondence'' means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

Cross Reference—Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member.

(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use, shall be maintained for a period of three years from the date of each use.

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular

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[4] The requester stated, ''The requested extension is necessary to allow for substantive review and comment on what are extremely important issues for the securities industry.'' Letter from Mari-Anne Pisarri, Pickard and Djinis, on behalf of Thomson Financial Services (April 30, 1998).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John Ramsay, Vice President and Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 29, 1998 (''Amendment No. 1''). In Amendment No. 1, the NASDR proposes to amend its filing to clarify that in determing whether a given communication constitutes correspondence for purposes of the rule, NASD members, as well as NASDR staff, should consider, among other things, the form and content of the communication.

circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Rule) shall file its initial advertisement with the Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.

(B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) [or (B)] of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in [those] *that* subparagraph[s], with any registered securities exchange having standards comparable to those contained in this Rule.

(4)(A) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department and/or the District Committee, at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure as contained in the Rule 9000 Series.

(5) In addition to the foregoing requirements, every member's [advertising] *advertisements* and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

(A) Advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype members, or concerning a merger with, or acquisition by, another member;

(B) Advertisements or sales literature which do no more than identify the Nasdaq symbol of the member and/or of a security in which the member is a Nasdaq registered market maker;

(C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

(D) Material sent to branch offices or other internal material that is not distributed to the public;

(E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 shall not be considered a prospectus for purposes of this exclusion;

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, unless such advertisements are related to direct participation programs or securities issued by registered investment companies.

(7) Material which refers to investment company securities or direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of subparagraphs (1) and (2).

(d) Standards Applicable to Communications With the Public

(1) General Standards

(A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the [advertising or sales literature] *communication* to be misleading.

(B) Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such [literature] *communications,* members must bear in mind that inherent in investments are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.

(D) In judging whether a communication of a particular element of a communication may be misleading, several factors should be considered, including but not limited to:

(i) the overall context in which the statement or statements are made. A statement made in one context may be

misleading even though such a statement could be [perfectly] appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

(ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience *or a single customer*, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

(iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner [obviously] can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be [worse] *more confusing* than too little information. Likewise, material disclosure relegated to legends or footnotes [realistically] may not enhance the reader's understanding of the communication.

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

(A) Necessary Data. Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with paragraph (f). Sales literature shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.

(B) *Making* [R]*recommendations in advertisements and sales literature.*

(i) In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:

a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, [and/]or that the member or associated persons will sell to or buy from customers on a principal basis;

b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

(ii) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

(iii) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

(iv) Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (iii). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

(C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

(D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in [the] *advertisement or sales literature* [communication]:

(i) The testimonial may not be representative of the experience of other clients.

(ii) The testimonial is not indicative of future performance or success.

(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.

(iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.

(E) Offers of Free Service. Any statement *in communications with the public* to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.

(F) Claims for Research Facilities. No claim or implication *in communications with the public* may be made for research or other facilities beyond those which the member actually possesses or has reasonably capacity to provide.

(G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used *in communications with the public* if they are misleading or are inconsistent with the content of the material.

(H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

(I) Periodic Investment Plans. *Advertisements and sales literature* [Communications with the public] should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.

(J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or

associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.

(L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized *in communications with the public* as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed. References to tax free/tax exempt current income must indicate which income taxes apply or which do not unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

(M) Comparisons. In making a comparison *in advertisements or sales literature*, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.

(N) Predictions and projections. *In communications with the public. i*[I]nvestment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.

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IM–2210–1. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) General Considerations

For purposes of the following guidelines, the term ''collateralized mortgage obligation'' (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as ''real estate mortgage investment conduits'' (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The term CMO and REMIC are now used interchangeably. In order to prevent [a communication about] *advertisements and sales literature regarding* CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following:

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a ''collateralized mortgage obligation.'' Member firms should not use the proprietary names for CMOs as they do not adequately identify the product. To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

(2) Educational Material

In order to ensure that customers are adequately informed about CMOs members are required to offer to customers education material which covers the following matters:

(A) A discussion of CMO characteristics an investments and their attendant risks;

(B) An explanation of the structure of a CMO, including the various types of tranches;

(C) A discussion of mortgage loans and mortgage securities;

(D) Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on value and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity;

(E) Questions an investor should ask before investing; and

(F) A glossary of terms that may be helpful to an investor considering an investment.

(3) Safety Claims

A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.

(4) Claims About Government Guarantees

(A) Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are ''government guaranteed'' securities. A government agency issue could instead be characterized as government agency backed. Of course, private- issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.

(B) If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.

(5) Simplicity Claims

CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.

(6) Claims About Predictability

A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.

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 NASDR included statements concerning the purpose of and basis for the

proposed rule change an 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 NASDR 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

Background

NASD Conduct Rule 2210 imposes various requirements on member communications with the public, designed to ensure that those communications are fair, balanced and not misleading. Rule 2210 does not expressly apply to the content of correspondence (*i.e.*, a communication to only one person). In addition, there is no definition of correspondence in the NASD rules, even though members are required to supervise the use of correspondence by their associated persons under Rule 3010.

Recently, several NASD disciplinary matters raised the issue of whether correspondence to a single customer constitutes ''sales literature'' subject to the requirements of Rule 2210.[4] The National Business Conduct Committee (''NBCC'')[5] consistently took the position in these cases that a document prepared for use with a single customer, and not for dissemination to the general public, is not ''sales literature'' as that term is defined in subparagraph (a)(2) to NASD Rule 2210. However, the NBCC also agreed that the application to correspondence of particular standards in the rules for communications to the public would be appropriate and would enable NASD staff to bring enforcement actions on the basis of clear violations of certain proscribed behavior. The NBCC recommended that the NASD define ''correspondence'' in Rule 2210 and amend the rule to clarify which standards apply to correspondence. In June 1997, the NASDR requested comment on these proposed amendments in Notice to Members 97–37 (June 1997).

As first proposed, the amendments to Rule 2210 would have required that communications prepared for a single customer be subject to the standards, but not the filing and review requirements, of Rule 2210. Some of these standards define or prohibit the dissemination of statements that could be considered misleading. Others require that certain additional disclosure, *e.g.*, that the member makes a market in a particular security, be included in certain cases in the communication. Most commenters thought it was appropriate only to apply the general standards of Rule 2210, which, among other things, prohibit untrue statements of material facts, the omission of material facts, and statements that are exaggerated, misleading or unwarranted. These commenters stated that imposing all of the specific standards on each item of correspondence, particularly those that require additional disclosure, would unduly complicate communication with clients and unnecessarily burden supervisory programs without materially contributing to the protection of investors. A few commenters supported the proposed amendments, stating that the proposed exemption of correspondence from the NASD filing and review requirements strikes the proper balance. One commenter suggested applying the proposed amendment only to solicitations, recommendations, and sales letters directed at an individual customer.

Discussion

The NASDR believes that certain statements pose similar dangers regardless of whether they are communicated to one person or many persons. An amendment to Rule 2210 to clarify how the rule applies to correspondence would provide better guidance to the membership and would help to assure that investors are adequately protected with respect to the communications they receive individually. At the same time, the NASDR recognizes that correspondence is highly individualized in nature and that much correspondence (unlike advertising and sales literature) is directed by registered representatives (''RR'') to customers with whom the RR already has an established relationship. Therefore, the NASDR has determined that the proposed rule change should subject correspondence to the general standards and those specific standards of Rule 2210 that prohibit misleading statements, but not to the specific standards of the rule that prescribe specific disclosure.

The proposed rule change creates a category defined as ''communications with the public'' to include the current definitions of ''advertisement'' and ''sales literature,'' and a new definition of ''correspondence.'' ''Correspondence'' is defined as ''* * * any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.'' In determining when a written or electronic communication is prepared for delivery to a single current or prospective customer, NASD members should consider and the staff of the NASDR should examine,[6] among other things, the form and content of the communication. Thus, a written or electronic communication addressed to a single current or prospective customer, the content of which is substantially identical to that of written or electronic communications sent to one or more other current or prospective customers, is a form letter, not ''correspondence.'' Because form letters are considered ''sales literature'' under Rule 2210, they would be subject to all of the general and specific standards of Rule 2210.

The proposed rule change amends Rule 2210 to subject individual correspondence to the general standards under subparagraph (d)(1) and the following specific standards under subparagraph (d)(2) of Rule 2210: (i) subparagraph (d)(2)(C), which prohibits exaggerated, unwarranted, or certain other specific claims or opinions, (ii) subparagraph (d)(2)(E), which prohibits certain offers of free services, (iii) subparagraph (d)(2)(F), which prohibits certain claims for research services, (iv) subparagraph (d)(2)(G), which prohibits certain hedge clauses, (v) subparagraph (d)(2)(J), which prohibits the implication of endorsement or approval by regulatory organizations, (vi) subparagraph (d)(2)(L), which prohibits certain statements regarding tax free or tax exempt returns, and (vii) subparagraph (d)(2)(N), which prohibits predictions and projections of investment results. Each of these specific provisions derive from members' general obligations not to make statements that are misleading or without a reasonable basis in fact.

Individual correspondence will not be subject to the following specific standards of Rule 2210: (i) subparagraph (d)(2)(A), which requires the inclusion of certain information regarding members' names, (ii) subparagraph (d)(2)(B), which requires that a member disclose specified information to the customer when making a recommendation, (iii) subparagraph

[4] *See, In the Matter of Peter Stuart Bevington*, Complaint No. C8A940021 (March 5, 1997); *In the Matter of William Stafford Thurmond*, Complaint No. C06930051 (Feb. 1, 1996): *In the Matter of Jeffery Steven Stone*, Complaint No. C06940036 (Feb. 1, 1996); and *In the Matter of Micah C. Douglas*, Complaint Nos. C06920046 and C06930068 (Sept. 19, 1995).

[5] The NBCC is now called the National Adjudicatory Council.

[6] *See* Amendment No. 1, *supra* note 3.

(d)(2)(D), which requires the inclusion of certain statements regarding testimonials, (iv) subparagraph (d)(2)(H), which prohibits exaggerated or unwarranted claims in advertisements for the recruitment of sales personnel, (v) subparagraph (d)(2)(I), which requires certain disclosures regarding periodic investment plans; (vi) subparagraph (d)(2)(K), which requires the identification and disclosure of sources other than the member for certain statistical tables, charts, graphs, or other illustrations, and (vii) subparagraph (d)(2)(M), which requires the inclusion of certain information when making comparisons of investment alternatives.

The proposed rule change is not intended to change the current application of Interpretive Memoranda under Rule 2210. Therefore paragraph (a) to IM–2210–1 (interpretation regarding collaterlized mortgage obligations) has been amended to clarify that only advertisements and sales literature are covered by the interpretation.

Finally, the proposed amendments also incorporate several minor technical changes that are non-substantive in nature.

2. Statutory Basis

The NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest. By subjecting individual correspondence to the general standards and those individual standards in Rule 2210 that prohibit misleading statements, the NASDR believes that the proposed rule change strikes the appropriate balance between protecting investors from misleading or inappropriate communications in correspondence and imposing workable regulatory requirements that reasonably permit member firms to exercise effective compliance oversight with respect to correspondence.

The NASDR is requesting that the proposed rule change be effective within 45 days of SEC approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDR does not believe 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.

[7] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was published for comment in Notice to Members 97–37 (June 1997). Eighteen comments were received in response thereto. Of the 18 comment letters received, 4 were in favor of the proposed rule change and 14 were opposed. Most of the commenters either opposed the proposed rule change or thought only the general standards of Rule 2210 should apply.

American Express strongly supported the proposed rule change stating that the NASD's willingness to address the dangers of misleading or unwarranted statements in correspondence while exempting such correspondence from NASD filing and review requirements is the proper balance.

AmeriTrade Holding Corporation stated that the proposed rule change would be beneficial as long as it only applies to solicitations, recommendations, and sales letters directed at an individual customer.

The Equitable and Banc One were generally supportive of goals of the proposed rule change but thought it was appropriate to focus on applying only the general standards of the Rule, rather than the specific standards. The Equitable stated that imposing all of the specific standards of Rule 2210 on each item of correspondence would unduly complicate communication with clients and unnecessarily burden supervisory programs without materially contributing to the protection of investors.

PSA, The Bond Market Trade Association, The Securities Industry Association, The Investment Company Institute, New York Life Insurance Co., American Funds Distributors, Inc., Mutual Service Corporation, A. G. Edwards & Sons, Inc., T. Rowe Price Associates, Inc., Arlington Securities Inc., JP Morgan, and CUSO Financial Services, Inc. all opposed the proposed rule change stating that (i) existing NASD rules sufficiently govern the content and use of correspondence, (ii) the application of the Rule to a large amount of a firm's correspondence would be irrelevant, and (iii) review of all such correspondence would be burdensome.

Merrill Lynch stated that if the proposed rule change is adopted as proposed, a letter to a client disclosing his or her quarterly mutual fund distributions would presumably be subject to the requirements of Securities Act Rule 482, and would require inclusion of the five-year, ten-year and since-inception performance of the fund, disclosures that past performance is no assurance of future results, and disclosures that the investment return and principal value will fluctuate so that the investor's shares, when redeemed, may be worth more or less than their original cost.

PSA stated that the proposed rule change would unnecessarily inhibit the use of electronic communications media, because electronic correspondence, unlike sales literature and advertisements, often takes the form of an ongoing dialogue between two parties, involving the exchange of multiple messages, and that the application of the specific content requirements of Rule 2210 to all such communications would require member firms to repeat large amounts of information in each message.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Copies of the submissions, 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 at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. 20549. 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 No. SR–NASD–98–29 and should be submitted by May 29, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12264 Filed 5–7–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39948; File No. SR–SCCP–98–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Recording Fees

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 23, 1998, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend on a pilot basis for two months through June 30, 1998, a reduction in SCCP's fee schedule for trade recording fees for certain specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the propose of a statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP proposes to extend, for a two month period, its pilot program reducing SCCP's trade recording fees for certain specialists. On February 9, 1998, the Commission temporarily approved the trade recording fee reduction effective for trades settling January 2, 1998, through April 30, 1998.[3]

Prior to the approval and implementation of the pilot program, SCCP charged a trade recording fee of $.47 per side for regular trades. The proposed pilot program bifurcates the category of trade recording fees for regular trades into trades not matching with PACE orders and trades matching with PACE orders.[4] The trade recording fees for trades not matching with PACE orders remains $.47 per side. The proposed pilot program reduces SCCP's trade recording fees for trades matching with PACE orders. For these trades, the trade recording fee is reduced to: (i) $.27 per side for the first 2,500 trades per month (a reduction of $.20 per trade) and (ii) $.10 per side for trades in excess of 2,500 per month (a reduction of $.37 per trade).

SCCP has been working closely with the Philadelphia Stock Exchange, Inc. (''PHLX'') to reevaluate its fees. In connection with this effort, SCCP is proposing to extend the pilot program reducing these trade recording fees on a temporary basis through June 30, 1998.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act,[5] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(e)(2) thereunder.[7] At any time within sixty 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 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–98–02 and should be submitted by May 29, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12262 Filed 5–7–98; 8:45 am]

BILLING CODE 8010–01–M

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 39630 (February 17, 1998), 63 FR 7848.

[4] PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real time order routing and execution system.

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974 (Special 301)

AGENCY: Office of the United States Trade Representative.

ACTION: Identification of countries that deny adequate protection for intellectual property rights or market access for persons that rely on intellectual property protection.

SUMMARY: The United Sates Trade Representative (USTR) is required by the ''Special 301'' provisions in U.S. trade law to identify those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries. These identifications are presented below.

DATES: These identifications took place on April 30, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864, Steve Fox, Deputy Director for Intellectual Property, (202) 395–6864, or Geralyn S. Ritter, Associate General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242) (commonly referred to as Special 301) requires the USTR, within 30 days of the publication of the National Trade Estimates Report provided for in section 181(b) of the Trade Act, to identify all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market acess to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 1998, the USTR identified 47 trading partners as failing to provide adequate and effective intellectual property protection and fair and equitable market access to persons that rely on such protection. In addition, China's implementation of the 1995 and 1996 Bilateral IPR Agreements will remain subject to monitoring under section 306 of the Trade Act (19 U.S.C. 2416). As a result of these agreements and extensive follow-up work with Chinese officials, China now has a functioning system to protect intellectual property rights (IPR). As an integral part of this national effort, numerous laws, regulations and circulars were issued during 1997. There has also been continued progress on enforcement in China. In 1997, U.S. industry losses from pirated optical media exports declined very significantly according to industry estimates. Nevertheless, we remain concerned with end-user piracy of business software, continuing retail piracy, growing trademark counterfeiting and problems in obtaining administrative protection for pharmaceuticals. U.S. officials will continue to work to ensure that China strengthens its enforcement against illegal importation, distribution, reproduction and sale of all illegitimate IPR products.

Fifteen other trading partners were placed on the administratively-created ''priority watch list,'' including Argentina, Bulgaria, the Dominican Republic, Ecuador, Egypt, the European Union, Greece, India, Indonesia, Israel, Italy, Kuwait, Macao, Russia and Turkey. Bulgaria will be subject to review during the course of the year to maintain pressure for further progress. Thirty-one other countries were placed on the special 301 ''watch list,'' including Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Guatemala, Honduras, Hong Kong, Ireland, Jamaica, Japan, Jordan, Korea, Oman, Pakistan, Peru, The Philippines, Poland, Qatar, Saudi Arabia, Singapore, South Africa, Sweden, Thailand, Ukraine, U.A.E. (United Arab Emirates), Venezuela, and Vietnam. Of these, at least Colombia, Hong Kong, Jordan, and Vietnam will be subject to interim reviews during the coming year. The USTR highlighted concerns, developments and expectations for further progress in 17 other countries. Finally, the USTR announced the initiation of a WTO dispute settlement case against Greece and the European Communities for violations of the enforcement obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Claude Burcky,

Director of Intellectual Property.

[FR Doc. 98–12196 Filed 5–7–98; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–108]

Determinations Under Section 304 of the Trade Act of 1974: Argentine Specific Duties and Non-Tariff Barriers Affecting Textiles, Apparel, Footwear and Other Items

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined that Argentina's specific duties on textiles and apparel and statistical tax on almost all imports violate the General Agreement on Tariffs and Trade (GATT) 1994. This determination is based on the report of a dispute settlement panel convened under the auspices of the World Trade Organization (WTO) at the request of the United States and the report of the WTO Appellate Body reviewing the panel report. The panel report and the Appellate Body report (the WTO reports) were adopted by the WTO Distpute Settlement Body (DSB) on April 22, 1998. The United States expects that Argentina will conform its specific duties and statistical tax to meet its obligations under the GATT 1994, consistent with the decisions of the panel and the Appellate Body. In light of the foregoing, the USTR will not take action under section 301 of the Trade Act of 1974 (the Trade Act) at this time and has terminated this investigation. The USTR will monitor Argentina's steps to implement the WTO reports

and will take action under section 301(a) of the Trade Act if Argentina fails to implement the rulings and recommendations of the WTO reports within a reasonable period of time to be determined in accordance with WTO rules.

EFFECTIVE DATE: April 3, 1998.

ADDRESSES: 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kellie A. Meiman, Director for Mercosur and the Southern Cone, (202) 395–5190, or Hal S. Shapiro, Assistant General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Under the GATT 1994, Argentina agreed to a maximum tariff rate of 35 percent of the value of imported textile, apparel and footwear products. Argentina, through, has imposed minimum specific duties—*i.e.*, a minimum flat rate—applicable to hundreds of categories of textiles, apparel and footwear that exceed 35 percent when assessed on a wide variety of imports. The imposition of duties greater than an agreed upon maximum rate is inconsistent with Article II of the GATT 1994, which provides that imports shall be exempt from all duties or charges of any kind imposed on or in connection with importation in excess of those set forth in a WTO Member's tariff binding.

Argentina also has imposed a statistical tax on almost all imports that is calculated based on the value of the merchandise subject to it. The tax formerly was 3 percent of the price of covered imports, but Argentina reduced it to 0.5 percent in January 1998. Article VIII of the GATT 1994 states that all fees and charges imposed by WTO members, other than ordinary import or export duties, shall be limited to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes. Because the statistical tax is levied as a percentage of the value of imported items, and has no maximum charge, it is not limited to the cost of any service rendered.

On January 22, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether Argentina's measures are inconsistent with its obligations under the WTO agreements. On November 25, 1997, the panel determined that Argentina's specific duties on textiles and apparel violate GATT Article II and that the statistical tax violates GATT Article VIII. The panel's decision did not address Argentina's specific duties on footwear because, shortly after the United States requested the establishment of a panel, Argentina revoked these duties and imposed a safeguard measure in their place. On March 27, 1998, the WTO Appellate Body affirmed the panel's decision, though it disagreed with the panel's reasoning in certain respects.

Pursuant to section 304(a)(1)(A) of the Trade Act (19 U.S.C. 2414(a)(1)(A)), the USTR is required to determine in this case whether Argentina's specific duties and statistical tax violate, or otherwise deny, benefits to which the United States is entitled under a trade agreement. Where that determination is affirmative, the USTR must take action under section 301 of the Trade Act (19 U.S.C. 2411), subject to the specific direction of the President, if any, unless the USTR finds that one of the circumstances set forth in section 301(a)(2)(B) (19 U.S.C. 2411(a)(2)(B)) exists.

Based on the results of the WTO dispute settlement proceedings, as well as public comments received and appropriate consultations, the USTR has determined that Argentina's specific duties on textile and apparel imports violate Argentina's obligations under GATT 1994 Article II and its statistical tax on almost all imports violates GATT Article VIII.

The decision of the panel, as modified by the decision of the Appellate Body, was adopted at the April 22, 1998 meeting of the DSB. The USTR expects that Argentina will conform its specific duties and statistical tax to meet its obligations under the GATT 1994, consistent with the decisions of the panel and the Appellate Body, and will do within a reasonable period of time to be determined in accordance with WTO rules. Therefore, pursuant to section 301(a)(2)(B)(i) of the Trade Act, the USTR is not taking action at this time under section 301(a) of the Trade Act and has terminated this investigation. Pursuant to section 306 of the Trade Act (19 U.S.C. 2416), the USTR will monitor Argentina's implementation of the WTO reports and will take action under section 301(a) if Argentina fails to implement the rulings and recommendations of the WTO reports within a reasonable period of time to be determined in accordance with WTO rules.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–12195 Filed 5–7–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Change #3 to FAA–P–8110–2, Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: Change 3 is based on a National Transportation Safety Board (NTSB) recommendation calling for envelope tear warning systems on new airship certification projects. The recommendation stems from an airship accident that resulted from an envelope failure. Change 3 requires that some means of indication or warning system will alert the pilot of envelope tears. This could be an elaborate warning system based on sensors or simple gauges located and marked such that an unusual indication would be obvious to the pilot.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Send all comments to: Federal Aviation Administration, Small Airplane Directorate, Standards Office, ACE–110, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Regulations and Policy Branch, ACE–111, at the address above, telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Comments Invited

We invite interested parties to submit comments on the proposed change to the ADC. Commenters must identify the report number (FAA–P–8110–2) and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final Change 3 to the ADC. The proposed changes to the ADC and comments received may be inspected at the Standards Office (ACE–110), 1201 Walnut, Suite 900, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

In 1993, an airship came to rest on top and draped over a seven-story building in New York, New York, after the airship deflated in flight and became uncontrollable. The airship suffered a large tear in the envelope, the material

that makes up the shape of the balloon portion of the airship. The NTSB subsequently investigated and recommended several changes to the FAA's airship design standards. One of the recommendations called for an envelope tear warning system.

The primary reason for the NTSB's recommendation for the envelope tear warning system came from the crew's report. The pilot and passenger both stated that they were not aware of the loss of envelope pressure until the airship began to collapse, even though there was a pressure gauge and a low pressure indicator light to alert them of envelope damage. Although crew procedures for both major and minor envelope tears had been established, those actions were not accomplished because the crew did not initially recognize that the envelope was damaged.

The emergency procedures for this airship, relating to a tear in the envelope, are to operate the airship with a very low pressure. Very low pressure causes the airship to lose rigidity, but minimizes the loss of helium while maintaining controllability. If the emergency procedure is not followed, ballonets will automatically attempt to keep the envelope pressure constant, forcing helium out through the tear. Ballonets are airbags contained within the envelope that are inflated with air to control the rigidity and sometimes the center of gravity (trim) of the airship. A warning light and alarm activate when the envelope pressure drops below a nominal level; however, if the ballonets continue to automatically inflate to maintain envelope pressure, the alarm system does not activate until substantial helium is lost.

The NTSB noted that the airship was not equipped nor required to be equipped with a ballonet inflation rate transducer or other device, which might have alerted the crew to the loss of significant quantities of helium. The NTSB believes that had the airship been equipped with a better warning system, the pilot would have been alerted to the loss of pressure earlier and could have taken prudent emergency actions to improve the possibility of a controlled emergency landing.

Issued in Kansas City, Missouri, on April 30, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

Proposed Change #3 To FAA–P–8110–2 Airship Design Criteria (ADC)

New Item: Add to 6.2 ''(i)''

Change 3 is based on a National Transportation Safety Board (NTSB) recommendation calling for envelope tear warning systems on new airship certification projects. The recommendation stems from an airship accident that resulted from an envelope failure. Change 3 requires that some means of indication or warning system will alert the pilot of envelope tears.

The new paragraph will be added to item 6.2 as follows:

(i) Means to warn the pilot of envelope tears.

Acceptable compliance means include systems as simple as locating and marking both envelope and ballonet pressure gauges so that unusual indications (rapid loss of helium) are immediately noticeable to the pilot. If an airship valving system is complex or automatic, a system such as a ballonet airflow rate change sensor connected to a warning system may be more appropriate.

[FR Doc. 98–12293 Filed 5–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–8]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 28, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 4, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29161.

Petitioner: World Airways, Inc.

Sections of the FAR Affected: 14 CFR 121.434(e).

Description of Relief Sought: To permit World Airways to use flight attendants who previously served with, and were trained by Aer Lingus as required crew members without those flight attendants having received five hours of supervised operating experience under part 121.

Docket No.: 25080.

Petitioner: Aeroservice Aviation Center, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(3); 61.56(h)(1), (2), and (3); and 61.57(c)(3) and (d)(2); 61.58(e); 61.64(e)(3); 61.65(e)(2), and (g)(1) and (3); 61.67(c)(4) and (d)(2); 61.158(d)(1); 61.191(d); and 61.197(e).

Description of Relief Sought: To permit Aeroservice and persons who contract for services from Aeroservice to continue to use Federal Aviation Administration-approved flight simulators to meet certain flight experience requirements of part 61

without Aeroservice holding the certificate required by 14 CFR part 142.

Docket No.: 28853.

Petitioner: Sully Produits Spéciaux.

Sections of the FAR Affected: 14 CFR 145.75(d).

Description of Relief Sought: To permit Sully to authorize its inspectors who cannot read, write, and understand English to approve parts for return to service with Federal Aviation Administration Form 8130–3, ''Airworthiness Approval Tag.''

Docket No.: 28888.

Petitioner: Pemco Aeroplex, Inc.

Sections of the FAR Affected: CAR 4b.362(c)(1), 4b.362(e)(7), and 4b.382(d).

Description of Relief Sought: To permit the accommodations of two supernumeraries forward of a rigid cargo bulkhead and smoke-tight door, on 727–200 aircraft with Class E compartments.

Dispositions of Petitions

Docket No.: 27446.

Petitioner: State of New Jersey, Department of Transportation.

Sections of the FAR Affected: 14 CFR 156.5(b).

Description of Relief Sought/Disposition: To permit the petitioner to use up to $75,000 annually of State Block Grant Program funds for the period currently authorized for the Airport Improvement Program, which is fiscal years 1997 and 1998, for program administrative costs. *GRANT, April 3, 1998, Exemption No. 5835A.*

Docket No.: 28630.

Petitioner: Kevin Seddon.

Sections of the FAR Affected: 14 CFR 121.311(b).

Description of Relief Sought/Disposition: To permit Ms. Seddon to travel on the lap(s) of one or both of her parents, without her occupying an approved seat or berth with a separate belt properly secured about her during movement on the surface, takeoff, and landing. *GRANT, March 30, 1998, Exemption No. 6486A.*

[FR Doc. 98–12294 Filed 5–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Indian Reservation Roads Program Transportation Planning Procedures and Guidelines; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Highway Administration in cooperation with the Bureau of Indian Affairs (BIA) will jointly hold a meeting to present the final draft of the document, ''Indian Reservation Roads (IRR) Program Transportation Planning Procedures and Guidelines'' and to verify that all comments received were addressed.

DATES: The meeting will be held on June 8–11, 1998, beginning at 2:00 p.m. on June 8, running from 9:00 a.m. until 5:00 p.m on June 9–10, and from 9:00 a.m. until 12:00 p.m. on June 11.

ADDRESSES: The meeting will be held at the Wool Warehouse, located at 516 First Street, NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Julianne Stevenson, HFL–11, Room 4206, (202) 366–9490, Federal Lands Highway Office; or Mr. Wilbert Baccus, HCC–10, Room 4230, (202) 366–0780, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For the BIA: Mr. LeRoy Gishi, Bureau of Indian Affairs, Division of Transportation, (202) 208–4359, U.S. Department of the Interior, 1849 C. Street, NW. (Code 260 MS 4058 MIB), Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this public meeting notice may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su__docs. The final draft IRR Program Transportation Planning Procedures and Guidelines will be available May 15, 1998, on the Federal Lands Highway Office home page at: http://www.fhwa.dot.gov/lands.html.

Public Meeting

The purpose of this public meeting is to present the final draft of the document, ''Indian Reservation Roads Program Transportation Planning Procedures and Guidelines and to verify that all comments received were addressed.

On March 24, 1997, the first draft of this document was mailed to all Indian Tribal Governments, the Bureau of Indian Affairs, and the Federal Highway Administration for review and comment. June 9–12, 1997, the comments were reviewed and the second draft of the document was prepared. On September 4, 1997, the second draft of this document was mailed to all Indian Tribal Governments, the Bureau of Indian Affairs, the Federal Highway Administration and other interested parties for review and comment. The comment period closed on November 21, 1997. In addition, a national meeting was held on September 24–25, 1997, in Denver, Colorado to review and discuss the subject document in detail. Comments were solicited and received at this meeting. On December 8–12, 1997, February 3–6, 1998, March 10–13, 1998, and April 6–10, 1998, the comments received were addressed by the Transportation Planning Policy and Procedures Team (the Team). This team is comprised of the following individuals:

Francine Shaw-Whitson—Federal Highway Administration, Federal Lands Highway Office, Washington, DC

Julianne Stevenson—Federal Highway Administration, Federal Lands Highway Office, Washington, DC

Dee Spann—Federal Highway Administration, Office of Environment and Planning, Washington, DC

Joseph Martin—Bureau of Indian Affairs, Division of Transportation, Albuquerque, New Mexico

Galen Balster—Bureau of Indian Affairs, Aberdeen Area Office, Aberdeen, South Dakota

Robert D. Maxwell, Jr.—Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona

Harold Riley—Bureau of Indian Affairs, Navajo Area Office, Gallop, New Mexico

R. Evan Fulton—Tribal Technical Assistance Program, Houghton, MI

Everett Waller—Intertribal Transportation Association (Osage Nation, of Oklahoma, Oklahoma)

Don Ellis—Oklahoma Department of Transportation (Comanche Indian Tribe, Oklahoma)

Robert Endicott—Cherokee Nation of Oklahoma, Oklahoma

Roy Begay—Navajo Nation of Arizona, New Mexico, and Utah; Arizona

James Mark Wright—Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico

Becky Rey—Confederated Tribes of the Colville Reservation, Washington

Larry L. Keeler—Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona

Alvin Moyle—Paiute Shoshone Tribe of the Fallon Reservation and Colony, Nevada

Herbert Tate—White Mountain Apache Tribe of the Fort Apache Reservation, Arizona

Dennis Smith—Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

Rebecca Torres—Alabama/Quassarte Tribal Town of the Creek Nation of Oklahoma, Oklahoma

James Garrigan—Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota

Kevin R. Alford—Eastern Band of Cherokee Indians of North Carolina, North Carolina

Tracy VanRite—Menominee Indian Tribe of Wisconsin, Wisconsin

Henry Hoggatt—Chickasaw Nation, Oklahoma

Sandra Shade—Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona, Arizona

Tim Longie, Sr.—Spirit Lake Tribe, North Dakota

Lewis B. George—Catawba Indian Nation, South Carolina

David McKinney—Muscogee (Creek) Nation, Oklahoma

Louis Hood—Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona

Emil Tojola—Pueblo of Isleta, New Mexico

Glenn Wasson—Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada

Frederick Murillo—Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

Mark Tibbetts—Eight Northern Indian Pueblos Council, New Mexico

R.T. Eby—Cocopah Tribe or Arizona

Levi Valdez—Bureau of Indian Affairs, Albuquerque Area Office, Northern Pueblo Agency, New Mexico

Also, these meetings were attended by members of various other tribes who provided input into the revision of this document.

Copies of the document will be available May 15, 1998, and can be obtained from the Federal Highway Administration, Federal Lands Highway Office, HFL–11, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Allen W. Burden,

Acting Federal Lands Highway Program Administrator.

[FR Doc. 98–12269 Filed 5–7–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3774; Notice 1]

Program Plan for Evaluating the Effectiveness of Existing Regulations, 1998–2002

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of its Evaluation Program Plan for 1998–2002. The report describes the agency's ongoing and planned evaluations of its existing Federal Motor Vehicle Safety Standards (49 CFR Part 571) and its other safety and consumer programs. It also summarizes the results of completed evaluations. The agency's evaluation program responds to Executive Order 12866, which provides for Government-wide review of existing significant Federal regulations. This notice solicits public review and comment on the evaluation plan. Comments received will be used to improve the plan.

DATES: Comments must be received no later than September 8, 1998.

ADDRESSES: *Report:* Interested people may obtain copies of the reports free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2560).

SUPPLEMENTARY INFORMATION: NHTSA has rigorously evaluated its major programs as a matter of policy since 1970. The evaluation of the effectiveness of the Federal Motor Vehicle Safety Standards (FMVSS) began in 1975. The Government Performance and Results Act of 1993 and Executive Order 12866, ''Regulatory Planning and Review,'' issued in October 1993 (58 FR 51735), now oblige all Federal agencies to evaluate their existing programs and regulations. Previously, Executive Order 12291, issued in February 1981 (46 FR 13193), also required reviews of existing regulations. Even before 1981, however, NHTSA was a leader among Federal agencies in evaluating the effectiveness of existing regulations and technologies. There are large data bases of motor vehicle crashes which can be analyzed to find out what vehicle and traffic safety programs work best.

This five-year plan presents and discusses the programs, regulations, technologies and related areas NHTSA proposes to evaluate, and it summarizes the findings of past evaluations. Depending on scope, evaluations typically take a year or substantially more, counting initial planning, contracting for support, OMB clearance for surveys, internal reviews, approvals, publication, review of public comments, and the last phase of preparing recommendations for subsequent agency action.

Most of NHTSA's crashworthiness and several crash avoidance standards have been evaluated at least once since 1975. A number of consumer-oriented regulations, e.g., bumpers, theft protection, fuel economy and NCAP have also been evaluated. So have promising safety technologies, such as antilock brake systems, that were not mandatory under Federal regulations. The plan for the next five years includes evaluations of new and existing vehicle safety regulations, technologies and consumer protection programs, plus the completion of an assessment of the highway safety program.

NHTSA welcomes public review of the plan and invites the reviewers to comment about the selection, priority, and schedule of the regulations to be evaluated. The agency is interested in learning of any additional data that may be useful in the evaluations. The plan will be periodically updated in response to public and agency needs, with a complete revision scheduled every four years. The most recent plan before this one was published on June 10, 1994 (59 FR 30090).

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business

information regulation. (49 CFR Part 512).

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested people continue to examine the docket for new material.

People desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 98–12232 Filed 5–7–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Grant To Support the Demonstration and Evaluation of Programs To Reduce the Incidence of Illegal Passing of School Buses

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary grant agreement program to support the demonstration and evaluation of programs to reduce the incidence of illegal passing of school buses.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary grant agreement program to support the demonstration and evaluation of programs to reduce the incidence of illegal passing of school buses.

The goal of NHTSA's school bus safety program is to reduce school-bus-related fatalities and injuries. While the number of fatalities and injuries related to school bus crashes has been consistently low for over a decade, the number of motorists illegally passing school buses is increasing, jeopardizing the safety record of school transportation. This cooperative agreement program will support development and implementation of community-based demonstration projects that have the potential to substantially reduce the incidence of illegal passing.

NHTSA anticipates funding up to four demonstration projects for a minimum demonstration period encompassing one complete school year and a total period of performance of no more than 15 months.

This notice solicits applications from public and private, non-profit and for-profit organizations, state and local governments and their agencies. Interested applicants must submit an application package as further described in the Application Procedures section of this notice. The applications will be evaluated to determine the proposals that will receive funding under this announcement.

DATES: Applications must be received at the office designated below on or before 3 pm June 10, 1998.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Agreement Program No. NTS–01–8–05130.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202) 366–9557. Programmatic questions relating to this grant agreement program should be directed to Diane Wigle, Safety Countermeasures Division, NHTSA, 400 7th Street, SW., (NTS–15), Washington, DC 20590, by e-mail at dwigle@nhtsa.dot.gov, or by phone at (202) 366–4301. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

An estimated 23 million students ride school buses twice daily every school day to go to and from school. Their safe travel is a top concern of Federal, State and local governments, school districts, school administrators, parents, and citizens. To ensure their safety, NHTSA established and currently enforces Federal Motor Vehicle Safety Standards governing the manufacture of buses to be used to transport school children. In addition, NHTSA's Guideline #17 establishes minimum recommendations for a pupil transportation safety program, including the identification, operation, and maintenance of buses used for carrying students; training of passengers, pedestrians, and bicycle riders; and administration.

Even with school-bus-specific Federal Motor Vehicle Safety Standards and Guideline #17, some school bus safety problems persist. One such problem is the problem of motor vehicles illegally passing school buses stopped to load/unload students (also referred to as stop-arm violations). Though it is illegal in every state to pass a school bus stopped to load or unload students, every state faces the problem of citizens disobeying the law.

In October 1997 the National School Transportation Association conducted a survey of state school transportation directors. As part of that survey the directors were asked to identify the three biggest issues in their state for school transportation. The problem of illegal passing of school buses was reported as one of their top safety concerns.

The School Transportation Management Section (STMS) of the Florida Department of Education recently documented the size of that state's illegal passing problem. It was determined through a study conducted by the University of South Florida for STMS that on one day in May, 1995, 10,590 vehicles illegally passed stopped school buses in 58 of Florida's 67 school districts (approximtaly 11,150 school buses). During this same school year, two of Florida's public school children were killed by motorists illegally passing stopped school buses. However, the statewide citation totals for the illegal passing of stopped school buses accounted for only 13,178 of the over 17 million citations issued for all traffic violations in the state from 1988 to 1992.

A one-day study conducted September 24, 1996 revealed that 3,394 Virginia motorists illegally passed a stopped school bus on that day. Of that total, 187 involved passing the bus on the side that students enter and exit. A total of 119 out of 131 school divisions in the state participated in the study. Though Virginia and Florida transport a similar number of students on a comparable number of school buses, Virginia school buses only travel half the miles Florida school buses travel in a year.

The Evaluation Unit within the Division of Traffic Safety of the Illinois Department of Transportation conducted a probability-based sample survey of 250 school buses to arrive at an estimate of the total number of stop-arm violations of school buses in Illinois. Drivers of the 250 buses were asked to record stop-arm violations

during a 41 school day time period. A total of 135 of the drivers completed and returned the survey. A total of 3,450 violations were reported by the school buses involved in the study. Based on the findings, the estimated number of stop-arm violations each school year in Illinois is over 1,900,000, a major traffic safety problem in Illinois.

Due to the high number of incidents of illegal passing of school buses, the tremendous potential safety consequences of the violations and the results of the recent studies conducted on the subject, NHTSA proposes to support the development and implementation of four community-based programs to address the problem of illegal passing of stopped school buses. The results of these four community programs and those of a variety of other community programs aimed at reducing the number of incidents of illegal passing sites will be included in a manual NHTSA plans to produce in FY 2000.

Purpose

This grant will support the development and implementation of up to four community-based public information and law enforcement programs designed to decrease the incidents of vehicles illegally passing school buses stopped to load/unload passengers.

Project eligibility

Applications may be submitted by public and private, non-profit and for-profit organizations, and state and local governments and their agencies or a consortium of these groups. Thus, schools, research institutions, law enforcement agencies, community traffic safety and injury prevention programs, hospitals, other public and private (non-or not-for profit) organizations, and state and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this grant agreement program. Preference will be given to the proposals that contain pledges of financial commitments to the project from other sources.

Application Procedure

Each applicant must submit one original signature and two copies of the grant application package to: Office of Contracts and Procurement, NAD–30, DOT/National Highway Traffic Safety Administration, ATTN: Rose Watson, 400 7th Street, SW, Washington, DC 20590. One additional copy will facilitate the review process, but is not required. Applications must include a completed Application for Federal Assistance (standard form 424—revised 4–88).

Only complete packages received at this address on or before 3 pm, June 10, 1998, will be considered. No facsimile transmissions will be accepted. Due to the large number of actions being processed, be certain that the project number is indicated on the envelope and the application. Please direct program related questions to Diane E. Wigle, (202) 366–4301 and those related to grant application and administration nature to Rose Watson, (202) 366–9557.

Application Contents

Applicants must prepare a proposal that details the demonstration project they propose to conduct and the specific activities and costs for which demonstration grant funds are being requested.

Applicants need to consult and gain commitment to the proposed project from the school system(s) and law enforcement agencies of the community in which the project is to be implemented. At a minimum, letters of commitment and support from the involved school system(s) and law enforcement agencies must be included in the proposal package. The minimum demonstration period should encompass one complete school year and the total period of performance no more than 15 months.

The application (one original) and two copies shall consist of the following: A signed copy of OMB standard Form 424 (revised 4/88, including 424A and 424B) ''Application for Federal Assistance'' with the required information provided and the Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions, Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Certification regarding Drug-Free Workplace Requirements: identification of any portions of the application for which the applicant seeks confidentiality (in accordance with 49 CFR part 512); the Program Narrative Statement; and address the following:

A. In accordance with SF 424A, Budget Information, Sections A, B and C, a detailed budget estimate of all activities to be conducted with grant funding must be provided. Funding sources, other than the funds being provided through this grant, are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the demonstration will be met.

B. Program Narrative Statement: Proposal must fully describe the scope of the demonstration project, detailing the activities and costs for which funding is being requested.

1. Specific activities to implement a program to reduce the incidence of illegal passing of school buses for one complete school year and the total period of performance of no more than 15 months. This should include goals, objectives, and strategies. The proposed countermeasures must be devised from an analysis of the community problem of illegal passing of school buses, and the problem must be fully described in the proposal, including a demographic description of the community, e.g. size of school district, students transported by school buses, etc.

2. The application should also include plans for the following:

—Specific education programs for the target group;
—Broad-based mass media Public Information and Education program support;
—Enhanced enforcement program, including waves of enforcement throughout the school year;
—Time schedules and milestones for each activity;
—Interaction between the grantee, local school system(s), and law enforcement organizations;
—The responsible agency or organization to conduct each activity;
—Source, type, and level of support.

3. A description of what will be done specifically with the demonstration grant funds, along with the time schedules, milestones, and any product deliverables.

4. An identified reporting schedule for quarterly and final reports to be submitted as a performance requirement of the awarded cooperative agreement. (See TERMS AND CONDITIONS OF AWARD)

5. An evaluation plan which describes how the grantee will evaluate the demonstration project. As a minimum the Evaluation Plan must contain:

—A description of the evaluation to be employed to assess the program and project activities and their effectiveness. Specify variables necessary to assess performance and/or impact for each objective.

Evaluation Criteria and Review Process

Initially all application packages will be reviewed to ensure that they contain

all of the items specified in the Application Contents section of this announcement. Each complete application will then be evaluated by a Technical Evaluation Committee within NHTSA. The committee will evaluate the proposals based on the following criteria presented in order of importance:

1. Goals, Objectives, and Workplan (35 Percent)

The applicant's goals are clearly articulated and the objectives are time-phased, specific, measurable, and achievable. The proposal will achieve the desired outcome of reducing the incidence of motorists illegally passing school buses stopped to load/unload passengers. The proposal addresses what the applicant plans to develop and implement, how this will accomplished, activities that are appropriate to reach the target audience, and includes the major tasks and milestones necessary to complete the project.

2. Analysis of Community Problem (25)

The proposed program countermeasures are devised from an analysis of the community problem of motorists illegally passing school buses stopped to load/unload students. This problem identification data must be presented in the submitted proposal. The applicant provides sufficient evidence of community cooperation and commitment to be able to successfully carry out the proposed project. Letters of commitment from the local school system(s) and law enforcement agencies are included in the application. Community demographics are detailed in the application.

3. Evaluation Plan (20 Percent)

The proposal clearly describes the proposed evaluation design and the methods for measuring the outcomes of the project. The applicant provides sufficient evident of community cooperation and commitment to allow the plan to be implemented.

4. Staffing and Budget (20 Percent)

The proposed staff are clearly described, appropriately assigned, and have adequate skills and experience to conduct the project. The applicant has the capacity and facilities to design, implement, and evaluate the proposed project. The proposal describes the project activities in sufficient detail to support the estimated budget; the budget is sufficient detailed to allow NHTSA to determine that the estimated coats are reasonable and necessary to perform the proposed efforts. Financial or in-kind commitment of resources by the applicant or other supporting organizations has been clearly identified.

Availability of Funds and Period of Support

Approximately $170,000 has been allocated for this demonstration program. Subject to the availability of funds, award amounts may be approximately $40,000, depending on the type of demonstration proposed and the estimated resources required to accomplish the demonstration objectives. At the discretion of the government, funds may be obligated fully at the time of award of this grant or incrementally over the period of the grant. Nothing in this solicitation should be constructed as committing NHTSA to make any award.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other Federal, state, local, and private sources to augment those available under this announcement. For those applicants that are evaluated as meritorious for consideration for award, preference may be given to those that have proposed cost-sharing strategies and/or have other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting requirements and deliverables:

A. *Quarterly Performance Reports*—Three copies of a letter-type report shall be submitted to the NHTSA office designated in the grant award document within 30 days or the end of the quarter being reported. This report shall briefly present information on the progress made in implementing, operating, and evaluating and demonstration, and shall contain information specified in 49 CFR 18.40, Monitoring and Reporting of Program Performance.

B. *Final Report*—Three copies of a final report shall be submitted to the NHTSA office designated in the grant award document within 60 days of project completion. The report must be submitted in a printed version and in a WorldPerfect 6.1 file on a standard 1.44 floppy diskette. The final report shall include the following information at a minimum:

(a) A two-to-three page executive summary of the activities undertaken and the results achieved:

(b) A detailed description of all activities conducted (during the period being reported) which impacted the demonstration:

(c) An analysis and interpretation of those activities and an assessment of the results achieved:

(d) A copy of all materials (print, audio, video, electronic, camera-ready material, etc.) created under the grant agreement. In addition all print materials must be provided in finished form and on computer diskette with complete printing instructions including all fonts used in the product: and

(e) Recommendations for follow-on efforts.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: April 29, 1998.

James Nichols,

Acting Associate Administrator for Traffic Safety programs.

Appendix A—Application for Federal Assistance, Standard Form 424 (rev 4–88)

BILLING CODE 4910–59–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION 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. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 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 (0348-0043), 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.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	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.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	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 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	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. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 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 (0348-0044), 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.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed 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

49 CFR Part 29 - Appendix A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. 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 the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. 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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
9. 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.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, 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 may terminate this transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND

OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment 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 (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature/Authorized Certifying Official	Typed Name and Title
Applicant/Organization	Date Signed

49 CFR Part 29 - Appendix B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

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 had 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 meaning 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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, 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 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND

VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is 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.

Signature/Authorized Certifying Official	Typed Name and Title
Applicant/Organization	Date Signed

49 CFR Part 29 - Appendix C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

   Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

   Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

   Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

   Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Alternate I. (Grantees Other Than Individuals)

A. The grantee 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 ongoing 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 ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. 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 paragraph (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.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Signature/Authorized Certifying Official	Typed Name and Title
Applicant/Organization	Date Signed

[FR Doc. 98–11796 Filed 5–7–98; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 575]

Review of Rail Access and Competition Issues

AGENCY: Surface Transportation Board, DOT.

ACTION: Convening of conference.

SUMMARY: A conference will be held on May 21, 1998, to address certain issues related to rail access and competition.

DATES: May 21, 1998.

ADDRESSES: Federal Regulatory Energy Commission, 888 First Street, N.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Administrative Law Judge Jacob Leventhal, (202) 219–2538 or Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On April 17, 1998, the Surface Transportation Board issued a decision addressing issues that had been raised concerning rail access and competition in today's railroad industry. Among other things, the decision directed railroads to meet with shippers, under the supervision of an Administrative Law Judge, to discuss issues relating to ''revenue adequacy'' and ''competitive access.'' An initial conference was held on April 28, 1998. A further conference will be held on May 21, 1998, in a hearing room at the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C.

Decided: May 4, 1998.

By the Board, Jacob Leventhal, Administrative Law Judge.

Vernon A. Williams,

Secretary.

[FR Doc. 98–12166 Filed 5–7–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33583]

Wisconsin Central Ltd. and Fox Valley & Western Ltd.—Joint Relocation Project Exemption—In Fond Du Lac, WI

Wisconsin Central Ltd. (WCL) and Fox Valley & Western Ltd. (FVW) have jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to enter into a project to relocate lines of railroad in Fond Du Lac, WI. Both WCL and FVW are Class II railroads commonly controlled by Wisconsin Central Transportation Company. The transaction was expected to be consummated on or shortly after April 16, 1998, the effective date of the exemption.

WCL and FVW own and operate parallel lines of railroad through Fond Du Lac, WI. The joint relocation will reroute operations from, and allow removal of, duplicative rail lines. Under the joint project, WCL and FVW agree to the following transactions: (1) WCL will abandon its line of railroad on FVW Line One between MP–175.85 near Dixie and Morris Street and MP–178.40 north of Scott Street, a distance of approximately 2.55 miles, and will also abandon its line of railroad on FVW Line Two between MP–145.58 near Guinette and Woodlawn Avenues and MP–146.24 north of Ninth Street where it connects with FVW Line One, a distance of approximately .66 miles, all in Fond Du Lac, WI; (2) FVW will construct a connecting track of approximately 2,430 feet in length between the WCL Line and FVW Line Two in the vicinity of Morris and Dixie Streets; [1] and (3) WCL will grant FVW trackage rights over the WCL Line between MP–154.87 at Dixie and Farwell Streets and MP–157.24 north of Scott Street, a distance of 2.37 miles.

The proposed joint relocation project will simplify rail operations. The notice states that no shippers will be adversely affected by these relocations or lose access to any rail service currently provided by WCL or FVW. It also states that Stock Lumber, Inc., located at MP–177.78 on FVW Line One, will continue to receive rail service via trackage that FVW is contractually bound to retain after the joint relocation project is completed.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See *City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See *D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33583, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Michael J. Barron, Esq., Wisconsin Central Ltd. and Fox Valley & Western Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Decided: May 4, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–12310 Filed 5–7–98; 8:45 am]

BILLING CODE 4915–00–P

[1] This will connect FVW Line Two with the WCL line. FVW Line One is already connected to the WCL line.

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 30, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 8, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0056.

Form Number: IRS Forms 1023 and 872–C.

Type of Review: Revision.

Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (1023); and Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code (872–C)

Description: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations prescribed in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation. Form 87–C extends the statute of limitations for assessing tax under 4940.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 29,409.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing, and sending the form to the IRS
1023 Parts I to IV	55 hr., 43 min	5 hr., 1 min	8 hr., 7 min
1023 Schedule A	7 hr., 10 min	0 min	7 min
1023 Schedule B	4 hr., 47 min	30 min	36 min
1023 Schedule C	5 hr., 1 min	35 min	43 min
1023 Schedule D	4 hr., 4 min	42 min	47 min
1023 Schedule E	9 hr., 20 min	1 hr., 5 min	1 hr., 17 min
1023 Schedule F	2 hr., 39 min	2 hr., 53 min	3 hr., 3 min
1023 Schedule G	2 hr., 38 min	0 min	2 min
1023 Schedule H	1 hr., 55 min	42 min	46 min
1023 Schedule I	3 hr., 35 min	0 min	4 min
872–C	1 hr., 26 min	24 min	26 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,069,527 hours.

OMB Number: 1545–0170.

Form Number: IRS Form 4466.

Type of Review: Extension.

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

Description: Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax for the tax year. This information is used to process the claim, so the refund can be issued.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 16,125.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 35 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—22 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 68,693 hours.

OMB Number: 1545–0219.

Form Number: IRS Form 5884.

Type of Review: Revision.

Title: Work Opportunity Credit.

Description: Internal Revenue Code (IRC) section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 85,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 28 min.
Learning about the law or the form—53 min.
Preparing and sending the form to the IRS—1 hr., 1 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 713,150 hours.

OMB Number: 1545–0231.

Form Number: IRS Form 6478.

Type of Review: Extension.

Title: Credit for Alcohol Used as Fuel.

Description: Internal Revenue Code (IRC) section 38(b)(3) allows a nonrefundable income tax credit for businesses that sell or use alcohol. Small ethanol producers also receive a nonrefundable credit for production of qualified ethanol. Form 6478 is used to figure the credits.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 5,600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hr., 43 min.
Learning about the law or the form—34 min.
Preparing the form—1 hr., 43 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 79,912 hours.

OMB Number: 1545–0687.

Form Number: IRS Form 990–T.

Type of Review: Revision.

Title: Exempt Organization Business Income Tax Return.

Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 37,103.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—65 hr., 3 min.
Learning about the law or the form—24 hr., 23 min.
Preparing the form—40 hr., 29 min.
Copying, assembling, and sending the form to the IRS—4 hr., 1 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,969,947 hours.

OMB Number: 1545–0984.

Form Number: IRS Form 8586.

Type of Review: Revision.

Title: Low-Income Housing Credit.

Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 hr., 25 min.
Learning about the law or the form—1 hr., 32 min.

Preparing the form—3 hr., 35 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 653,000 hours.

OMB Number: 1545–1593.
Form Number: IRS Form 1041–QFT.
Type of Review: Extension.
Title: U.S. Income Tax Return for Qualified Funeral Trusts.
Description: Internal Revenue Code (IRC) section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 15,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—9 hr., 5 min.
Learning about the law or the form—1 hr., 26 min.
Preparing the form—3 hr., 31 min.
Copying, assembling, and sending the form to the IRS—32 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 218,550 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–12213 Filed 5–7–98; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 27, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington DC 20220.

DATES: Written comments should be received on or before June 8, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0115.
Form Number: IRS Form 1099–MISC.
Type of Review: Extension.
Title: Miscellaneous Income.
Description: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boar proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales or $5,000 or more.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 4,302,217.
Estimated Burden Hours Per Respondent: 14 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,852,933 hours.

OMB Number: 1545–0129.
Form Number: IRS Form 1120–POL.
Type of Review: Extension.
Title: U.S. Income Tax Return for Certain Political Organizations.
Description: Certain political organizations file Form 1120–POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.
Respondents: Not-for-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 6,527.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—15 hr., 32 min.
Learning about the law or the form—6 hr., 12 min.
Preparing the form—15 hr., 6 min.
Copying, assembling, and sending the form to the IRS—2 hr., 25 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 256,185 hours.

OMB Number: 1545–0192.
Form Number: IRS Form 4970.
Type of Review: Extension.
Title: Tax on Accumulation Distribution of Trusts.
Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 30,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 12 min.
Learning about the law or the form—16 min.
Preparing the form—1 hr., 27 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 97,800 hours.

OMB Number: 1545–0196.
Form Number: IRS Form 5227.
Type of Review: Extension.
Title: Split-Interest Trust Information Return.
Description: The data reported is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation taxes.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 53,303.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 hr., 52 min.
Learning about the law or the form—3 hr., 48 min.
Preparing the form—10 hr., 19 min.
Copying, assembling, and sending the form to the IRS—1 hr., 37 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,336,768 hours.

OMB Number: 1545–0582.
Form Number: IRS Form 1139.
Type of Review: Extension.
Title: Corporation Application for Tentative Refund.
Description: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is reasonable.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 3,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—25 hr., 35 min.
Learning about the law or the form—3 hr., 50 min.

Preparing the form—9 hr., 4 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 119,490 hours.

OMB Number: 1545–0763.

Regulation Project Number: LR–200–76 Final.

Type of Review: Extension.

Title: Qualified Conservation Contributions.

Description: The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conservation purposes of a partial interest in real property.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 1,000.

Estimated Burden Hours Per Recordkeeper: 1 hour, 15 minutes.

Estimated Total Recordkeeping Burden: 1,250 hours.

OMB Number: 1545–0927.

Form Number: IRS Form 8390.

Type of Review: Extension.

Title: Information Return for determination of Life Insurance Company Earnings Rate Under Section 809.

Description: Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual insurance companies.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 150.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—56 hr., 41 min.
Learning about the law or the form—3 hr., 35 min.
Preparing and sending the form to the IRS—4 hr., 40 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 9,738 hours.

OMB Number: 1545–1014.

Form Number: IRS Form 1066 and Schedule Q (Form 1066).

Type of Review: Extension.

Title: U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return (1066); and Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation (Schedule Q).

Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 4,917.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	28 hr., 13 min	6 hr., 13 min.
Learning about the law or the form	6 hr., 41 min	1 hr., 28 min.
Preparing the form	9 hr., 41 min	2 hr., 34 min.
Copying, assembling, and sending the form to the IRS	32 min	16 min.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 736,862 hours.

OMB Number: 1545–1020.

Form Number: IRS Form 1041–T.

Type of Review: Extension.

Title: Allocation of Estimated Tax Payments to Beneficiaries.

Description: This form was developed to allow a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code (IRC) section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—20 min.
Learning about the law or the form—4 min.
Preparing the form—21 min.
Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Other (when such election is made).

Estimated Total Reporting/ Recordkeeping Burden: 1,040 hours.

OMB Number: 1545–1250.

Form Number: IRS Form 9356.

Type of Review: Revision.

Title: Application for Software Developers to Participate in the 1040PC Format for Individual Income Tax Returns.

Description: Form 9356 will be filled in by software developers and submitted to the IRS as an application for producing software for the Form 1040PC.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1308

Regulation Project Number: PS–260–82 Final.

Type of Review: Extension.

Title: Election, Revocation, Termination, and Tax Effect of Subchapter S Status.

Description: Sections 1.1362–1 through 1.1362–7 of the Income Tax Regulations provide the specific procedures and requirements necessary to implement section 1362, including the filing of various elections and statements with the Internal Revenue Service.

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents: 133.

Estimated Burden Hours Per Respondent: 3 hours, 18 minutes.

Estimated Total Reporting Burden: 322 hours.

OMB Number: 1545–1379.

Form Number: IRS Form 8831.

Type of Review: Extension.

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

Description: Form 8831 is used by a real estate mortgage investment conduit

(REMIC) to figure its excise tax liability under Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 31.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 32 min.
Learning about the law or the form—1 hr., 29 min.
Preparing and sending the form to the IRS—1 hr., 38 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 237 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–12214 Filed 5–7–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before July 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545–0865

Form Number: 8264

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,000

Estimated Time Per Respondent: 39 hr., 4 min.

Estimated Total Annual Burden Hours: 39,060

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 98–12199 Filed 5–7–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8288 and 8288–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests and Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before July 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288) and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).

OMB Number: 1545–0902.

Form Number: 8288 and 8288–A.

Abstract: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,918.

Estimated Time Per Respondent: 21 hr., 43 min.

Estimated Total Annual Burden Hours: 106,784.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–12201 Filed 5–7–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8271

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8271, Investor Reporting of Tax Shelter Registration Number.

DATES: Written comments should be received on or before July 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investor Reporting of Tax Shelter Registration Number.

OMB Number: 1545–0881.

Form Number: 8271.

Abstract: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their tax return from a tax shelter required to be registered under Internal Revenue Code section 6111 must report the tax shelter registration number to the IRS. Form 8271 is used for this purpose. The IRS uses the information provided on Form 8271 to identify the tax shelter from which the benefits are claimed and to determine if any compliance actions are needed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 297,500.

Estimated Time Per Respondent: 52 min.

Estimated Total Annual Burden Hours: 258,825.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 98–12202 Filed 5–7–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 250]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The specific authority to issue Taxpayer Advocate Directives and Proposed Taxpayer Advocate Directives. The text of the delegation order appears below.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Doug Peterson, Program Analyst, C:TA, Room 1027, 1111 Constitution Ave, NW, Washington, D.C. 20224, (202) 622–4315 (not a toll-free call).

Issuance of Taxpayer Advocate Directives

Authority: To issue Taxpayer Advocate Directives and Proposed Taxpayer Advocate Directives.

(1) Taxpayer Advocate Directives provide authority to the Taxpayer Advocate to mandate that functional areas make certain administrative or procedural changes. These changes are limited to situations in which the Taxpayer Advocate has previously requested a change be made to either improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) much in the way that a Taxpayer Assistance Order (under Section 7811 of the Internal Revenue Code) is used to grant relief to individual taxpayers. Directives will only be used to order specific actions when the Taxpayer Advocate believes the action is necessary to implement a recommendation designed to protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide a essential service to taxpayers. The only avenue of appeal, should a functional area disagree with the directive, is to the Deputy Commissioner. A Taxpayer Advocate Directive will *not* be issued to interpret law.

(2) A Proposed Taxpayer Advocate Directive will be issued to the Chief(s) of the responsible area. This will generally be the Headquarters functional area. However, if the policy or procedure is unique to a specific region, district, or service center, the Proposed Taxpayer Advocate Directive may be addressed to the director of that region, district, or center (with a copy of the Directive to the headquarters functional chief). A copy of the Proposed Taxpayer Advocate Directive will be sent the Deputy Commissioner. The proposed directive will specify a time period to respond (generally, 90 days). In certain instances, an extension to this time period may be granted. The response can take the form of an agreed action to resolve the problem, a counter-proposal of a different action to resolve the problem, or an explanation of why the proposed action or change cannot or should not take place. The Taxpayer Advocate, at his or her option, may accept an alternative suggestion or a proposal by the function to jointly work toward a solution to the problem. Generally, a Proposed Taxpayer Advocate Directive will not be issued until after the function has been given the opportunity to work with the Advocate to resolve the issue.

(3) If a response that is not deemed satisfactory (by the Advocate) is received within the time period allowed in the Proposed Taxpayer Advocate Directive, or if no response has been received, a formal Taxpayer Advocate Directive may be issued. The Directive will include an explanation of why the function's response is not satisfactory. A copy of the Directive will be provided to the function and the Deputy Commissioner.

(4) If the Chief of the area subject to the Taxpayer Advocate Directive disagrees with the action required by the directive, he/she may appeal the proposed action to the Deputy Commissioner within 10 calendar days of the date on the Directive. An appeal must include an analysis of why the proposed action cannot or should not be implemented. The Taxpayer Advocate or the Deputy Commissioner may, at their discretion, extend the 10-day period if they determine that more time is needed to provide information or analysis that was not included in the response to the Proposed Taxpayer Advocate Directive.

(5) In instances where the Taxpayer Advocate determines that the problem is immediate in nature and will have a significant negative impact on taxpayers, the Advocate may issue a Taxpayer Advocate Directive immediately, without the intervening step of a Proposed Taxpayer Advocate Directive. This will be done only if, in the opinion of the Advocate and the Deputy Commissioner, allowing normal time frames would prevent the implementation of the action. Such ''expedited'' Taxpayer Advocate Directives will receive immediate review by the Deputy Commissioner. It is anticipated that all parties involved (the Advocate, the Deputy Commissioner, and the Chief of any impacted functions) would meet as soon as possible to resolve the issue.

Delegated to: The National Taxpayer Advocate.

Redelegation: This Authority may not be redelegated.

Source of Authority: Treasury Order 150–10.

Approved:
Dated: March 17, 1998.

Charles O. Rossotti,
Commissioner.

[FR Doc. 98–12200 Filed 5–7–98; 8:45 am]
BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 63, No. 89

Friday, May 8, 1998

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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AC38

National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives

Correction

In proposed rule document 98–11654, beginning on page 24686, in the issue of Monday, May 4, 1998, make the following corrections:

§ 210.10 [Corrected]

1. On page 24702, § 210.10(d) is corrected to read as follows:

(d) *Minimum nutrient levels for school lunches/food-based menu planning alternatives.*

(1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (k)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—TRADITIONAL FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K–3 Ages 5-8	Grades 4–12 Ages 9 and older	Grades 7–12 Ages 12 and older
Energy allowances (calories)	517	663	785	825
Total fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(3)	(3)	(3)
RDA for protein (g)	7	9	15	16
RDA for calcium (mg)	267	267	370	400
RDA for Iron (mg)	3.3	3.3	4.2	4.5
RDA for Vitamin A (RE)	150	200	285	300
RDA for Vitamin C (mg)	14	15	17	18

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

(2)*Enhanced food–based menu planning alternative.* For the purposes of the enhanced food–based menu planning alternative, as provided for in paragraph (k)(2) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for lunches over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K–6	Grades 7–12	Grades K–3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(3)	(3)	(3)
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for Iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

* * * * *

§ 220.8 [Corrected]

2. On page 24708, in § 220.8(g)(2)(ii), in the table, the heading, ''Operation for'' should read ''Option for''.

3. On page 24708, in § 220.8(g)(2)(ii), in the table, in the fourth column under ''Grades K–12'', in the fifth entry, ''of'' should read ''or''.

BILLING CODE 1505-01-D

federal register

Friday
May 8, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 135

Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 135

[Docket No. 28743; Amendment Nos. 43, 73]

RIN 2120–AG55

Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises and clarifies certain conditions and limitations in part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircraft. The clarification is necessary to resolve ambiguity in the current rule regarding the requirement for redundant power for gyroscopic instrumentation. The intended effect of the action is to remove any ambiguity concerning the required power sources for the gyroscopic instruments required for flight under IFR for single engine aircraft involved in commercial, passenger-carrying operations.

This action also advises the public of the information collection approval by the Office of Management and Budget (OMB), withdraws SFAR 81 because the SFAR could not be placed in effect with a readily apparent ambiguity, adds the OMB control number to part 11, and amends part 135.

DATES: These amendments are effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Meier, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339), the **Federal Register**'s electronic bulletin board service ((202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9677.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 6, 1997, the FAA amended the conditions and limitations in part 135 for instrument flight rule, passenger-carrying operations in single-engine aircraft (62 FR 42364). That rule has an effective date of May 4, 1998 (62 FR 45014). Included in the August 6, 1997 final rule was SFAR 81, with certain information collection requirements, which was written to allow operators, whose aircraft were properly equipped, authority to operate before the effective date of the final rule. The information collection requirements of SFAR 81 and the final rule were submitted to OMB and were approved under OMB control number 2120–0619.

Consideration of Comments

On February 4, 1998, the FAA proposed to revise and clarify part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircraft (62 FR 6826, February 10, 1998). Three substantive comments were received on that proposal: two from airplane manufacturers, and one from an air carrier that operates under part 135; one comment from a trade association offered general support for the proposal.

Comment: Cessna Aircraft Company and Atlantic Aero stated that they have the required redundancy in their Caravan model aircraft because of its unique split panel configuration which uses both electric and bleed air sources to power its gyroscopic instruments. However, this configuration does not provide redundant sources of power on each instrument. Although Cessna and Atlantic Aero recognize that a separate electrically driven air pump may have to be added behind the current bleed air driven gyro now installed on the aircraft to comply with this rule, they both suggest that the installation of an additional, electrically powered attitude instrument should be permitted to meet the redundancy requirements.

FAA Response: Cessna states that they can comply with the proposed rule by installing an ''electrically driven back up vacuum pump behind the bleed air driven attitude gyro now installed on the aircraft. This will provide two sources of energy for both the gyros on the Captain's Instrument Panel.'' The FAA agrees that this would meet the requirements for redundancy, as stated in the proposal.

Regarding the installation of an additional, unrequired gyroscopic instruments for IFR, the FAA agrees that such additional instruments do not need redundant sources. Therefore, the FAA is amending the regulatory language by adding the word ''required'' after ''all'' to clarify that only *required* gyroscopic instruments must have redundant sources of power.

However, as to Cessna's specific suggestion that the installation of an additional, electrically-powered attitude indicator should meet the redundancy requirements for the bleed air driven gyroscopic instruments, the FAA does not agree. The FAA recognizes that the Cessna Caravan will comprise a large portion of the fleet that will benefit from the SEIFR rule. However, the FAA is promulgating a rule of general applicability, and it believes that there will be other operators of various types and models of aircraft (other than the Caravan) who will seek to modify their aircraft to gain the benefits of operating under the SEIFR rule. To amend this proposal to meet only the desires of Cessna Caravan operators may establish an economic disadvantage for some other operators, and would, in fact, require another notice and comment period.

Further, the additional attitude indicator that both Cessna and Atlantic Aero suggest is outside the basic ''T'' configuration of the primary flight instruments. The FAA considers the basic ''T'' configuration very important when manually flying the aircraft under IMC conditions, and is concerned about human factor problems associated with the placement of this additional attitude indicator. The FAA has therefore determined that safety requires that the primary flight instruments, powered by redundant energy sources, be positioned in the basic ''T'' configuration directly in front of the pilot flying the aircraft.

Cessna agrees that it can comply with the proposal, although the installation of the additional electrically driven vacuum pump is not its first preference for compliance. Therefore, in regard to this issue, the FAA will adopt the rule as proposed.

Comment: The Societe de Construction d'Avions de Touris (SOCATA), a European airplane manufacturer, states that the FAA should not be specific in citing the types of redundant power sources for the

gyroscopic instruments. Instead, SOCATA suggests establishing the ''safety objective'' of redundant sources of power and leaving it to the applicant to justify their option and means.

FAA Response: In reviewing SOCATA's comment, the FAA agrees that establishing a ''safety objective'' is flexible and beneficial to the regulated community. The FAA attempts to promulgate ''performance based'' regulations whenever possible. The FAA notes that § 135.163 is, in part, a performance based requirement. Section 135.163 requires ''two independent sources of energy,'' one source of which must be an engine-driven pump or generator. The other source, however, is not specified, so as to allow the aircraft operator to choose the appropriate equipment. Also, the FAA used the term ''source of energy'' to allow for future technological developments, which may provide energy from sources other than those currently used on aircraft.

Regulatory Analyses

The FAA is amending Part 135 because some commenters to the final rule on Commercial Passenger-Carrying Operations in Single-Engine Aircraft under Instrument Flight Rules had questions on the redundant sources of power to the gyroscopic flight instruments. This change will alleviate any ambiguity and clarify the regulatory requirements. Therefore, the FAA has determined that this regulation imposes no additional burden on any entity. Accordingly, it has been determined that the action (1) is not significant under Executive Order 12866 and (2) is not a significant rule under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, because this amendment is editorial in nature, no impact is expected to result, and a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact

The amendment does not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage will not be incurred by either U.S. operators abroad or foreign operators in the United States.

Unfunded Mandates Act

This amendment does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act and Information Collection Requirements

This amendment contains no additional information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

This collection of information cited in 14 CFR 135.163, 135.411, and 135.421 is required to obtain the benefits of operating under these rules, and will be used by (1) the operator to ensure that all maintenance is performed and (2) the FAA principal maintenance inspector (PMI) to monitor the continued airworthiness of the aircraft used in passenger-carrying operations.

Public reporting burden is estimated to average 0.8 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeepers and respondents have been given no assurance of confidentiality, nor is any needed. Please note that 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 number for this collection of information is 2120–0619.

List of Subjects

14 CFR Part 11

Administrative practices and procedure, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Safety, Single-engine aircraft.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 11 and 135 of Title 14 of the Code of Federal Regulations as follows:

PART 11—-GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102.

2. Section 11.101 is amended by adding new section numbers in numerical order and the OMB Control Number to the table in paragraph (b) as follows:

§ 11.101 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

14 CFR part or section identified and described	Current OMB Control No.
* * * * *	
§ 135.163	2120–0619
* * * * *	
§ 135.411	2120–0619
* * * * *	
§ 135.421	2120–0619
* * * * *	

3. For the reasons set out in the preamble, 14 CFR part 135 is amended as set forth below:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR 81—Passenger-Carrying Single-Engine IFR Operations

5. SFAR 81 is removed on May 4, 1998.

6. Section 135.163 is amended by revising paragraph (h) to read as follows:

§ 135.163 Equipment requirements: Aircraft carrying passengers under IFR.

* * * * *

(h) Two independent sources of energy (with means of selecting either) of which at least one is an engine-driven pump or generator, each of which is able to drive all required gyroscopic instruments powered by, or to be powered by, that particular source and installed so that failure of one instrument or source, does not interfere with the energy supply to the remaining instruments or the other energy source unless, for single-engine aircraft in all cargo operations only, the rate of turn indicator has a source of energy separate from the bank and pitch and direction indicators. For the purpose of this paragraph, for multi-engine aircraft, each engine-driven source of energy must be on a different engine.

* * * * *

Issued in Washington, DC on May 4, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–12229 Filed 5–4–98; 5:13 pm]

BILLING CODE 4910–13–U

federal register

Friday
May 8, 1998

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 412, and 413

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, and 413

[HCFA–1003–P]

RIN 0938–AI22

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement applicable statutory requirements, including section 4407 of the Balanced Budget Act of 1997, as well as changes arising from our continuing experience with the systems. In addition, in the addendum to this proposed rule, we are describing proposed changes in the amounts and factors necessary to determine rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 1998. We are also setting forth proposed rate-of-increase limits as well as proposing changes for hospitals and hospital units excluded from the prospective payment systems.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 7, 1998.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1003–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, ashington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1003–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer; and

Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

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FOR FURTHER INFORMATION CONTACT:

Nancy Edwards, (410) 786–4531, Operating Prospective Payment, DRG, and Wage Index Issues.

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, and Graduate Medical Education Issues.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Sections 1886(d) and (g) of the Social Security Act (the Act), set forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Certain specialty hospitals are excluded from the prospective payment systems. Under section 1886(d)(1)(B) of the Act, the following hospitals and units are excluded from PPS: psychiatric hospitals or units, rehabilitation hospitals or units, children's hospitals, long term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under section 1886(a)(4) of the Act, costs incurred in connection with approved graduate medical education (GME) programs are excluded from the operating costs of inpatient hospital services. Hospitals with approved GME programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the number of the hospital's residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412. The regulations governing excluded hospitals are located in both Parts 412 and 413, and the graduate medical education regulations are found in Part 413.

On August 29, 1997, we published a final rule with comment period in the **Federal Register** (62 FR 45966) setting forth both statutorily required changes and other changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, which were effective for discharges occurring on or after October 1, 1997. This rule also

implemented changes addressing payments for excluded hospitals and payments for graduate medical education costs. This final rule with comment period followed a proposed rule published in the **Federal Register** on June 2, 1997 (62 FR 29902) that set forth proposed updates and changes.

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs. This proposed rule would be effective for discharges occurring on or after October 1, 1998. Following is a summary of the major changes that we are proposing to make:

1. Changes to the DRG Classifications and Relative Weights

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and relative weights at least annually. Our proposed changes for FY 1999 are set forth in section II. of this preamble.

2. Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- FY 1999 wage index update.
- Changes to the data categories included in the wage index.
- Revisions to the wage index based on hospital redesignations.

3. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section IV. of this preamble, we discuss several provisions of the regulations in 42 CFR parts 412 and 413 and set forth certain proposed changes concerning the following:

- Definition of transfer cases.
- Rural referral centers.
- Disproportionate share adjustment.
- Bad debts.
- Direct graduate medical education programs.

4. Changes to the Prospective Payment System for Capital-Related Costs

In section V. of this preamble, we discuss several provisions of the regulations in 42 CFR part 412 and set forth certain proposed changes and clarifications concerning the following:

- Capital indirect medical education payments.
- Payments to new hospitals.

5. Changes for Hospitals and Hospital Units Excluded from the Prospective Payment Systems

In section VI. of this preamble, we discuss the following criteria governing excluded hospital issues:

- Hospital-within-a-hospital.
- Adjustments to the target amounts for FY 1999.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1999 prospective payment rates for operating costs and capital-related costs. We are also proposing update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1999 for hospitals and hospital units excluded from the prospective payment system.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

8. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 1999 capital cost model.

9. Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded from the Prospective Payment System

Section 1886(e)(3)(B) of the Act requires that the Secretary report to Congress on our initial estimate of a recommended update factor for FY 1999 for both hospitals included in and hospitals excluded from the prospective payment systems. This report is included as Appendix C to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix D provides our recommendation of the appropriate percentage change for FY 1999 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

The Balanced Budget Act of 1997 abolished the Prospective Payment Assessment Commission (ProPAC) and created the Medicare Payment Advisory Commission (MedPAC). Under section 1805(b) of the Act, MedPAC is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. The March 1, 1998 report made several recommendations concerning hospital inpatient payment policies. We reviewed those recommendations and this document sets forth our responses to those recommendations.

Although it has been our practice to include a reprint of ProPAC's March 1 report as an appendix to the proposed rule, we are not following that practice with MedPAC reports. For further information relating specifically to that report or to obtain a copy of the report, contact MedPAC at (202) 653–7220.

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1998 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system 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. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to 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 Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 496 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, cases are assigned to an MDC based on the principal diagnosis, before assignment to a DRG. However, there are five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 1999 and other decisions concerning DRGs are set forth below. Unless otherwise noted, our DRG analysis is based on the full (100 percent) FY 1997 MedPAR file based on bills received through September 1997.

2. MDC 5 (Diseases and Disorders of the Circulatory System)

In the August 29, 1997 hospital inpatient final rule with comment period (62 FR 45974), we noted that, because of the many recent changes in heart surgery, we were considering conducting a comprehensive review of the MDC 5 surgical DRGs. We have begun that review, and based upon our analysis thus far, we believe it is appropriate to propose some DRG changes immediately. These proposed changes are set forth below.

a. *Coronary Bypass.* There are two DRGs that capture coronary bypass procedures: DRG 106 (Coronary Bypass with Cardiac Catheterization) and DRG 107 (Coronary Bypass without Cardiac Catheterization). The procedures that allow a coronary bypass case to be assigned to DRG 106 include percutaneous valvuloplasty, percutaneous transluminal coronary angioplasty (PTCA), cardiac catheterization, coronary angiography, and arteriography.

In analyzing the FY 1997 MedPAR file, we noted that, of cases assigned to DRG 106, the average standardized charges for coronary bypass cases with PTCA were significantly higher than those cases without PTCA. There were approximately 4,400 cases in DRG 106 where PTCA is performed as a secondary procedure. These cases have an average standardized charge of approximately $69,000. The average charge of the approximately 95,000 cases in DRG 106 without PTCA is approximately $52,000.

Based on this analysis, we are proposing to create a new DRG for coronary bypass cases with PTCA. The cases currently in DRG 106 without PTCA would be assigned to another DRG and the cases currently assigned to DRG 107 would be unmodified. Because we would replace two DRGs with three new DRGs, we would revise the DRG numbers and titles accordingly. The new DRGs and their titles are set forth below:

DRG 106 Coronary Bypass with PTCA
DRG 107 Coronary Bypass with Cardiac Catheterization
DRG 109 Coronary Bypass without Cardiac Catheterization

We note that DRG 109 has been an empty DRG for the last several years.

b. Implantable Heart Assist System and Annuloplasty. In the August 29, 1997 final rule with comment period, we moved implant of an implantable, pulsatile heart assist system (procedure code 37.66) from DRGs 110 and 111 (Major Cardiovascular Procedures)[1] to DRG 108 (Other Cardiothoracic Procedures). Although this move improved payment for these procedures, they were still much more expensive than the other cases in DRG 108 ($96,000 for heart assist versus an average of $54,000 for all other cases in the FY 1996 MedPAR file). We stated that we would continue to review the MDC 5 surgical DRGs in an attempt to find a DRG placement for these cases that would be more similar in terms of resource use.

In reviewing the FY 1997 MedPAR file, we note that heart assist system implant continues to be the most expensive procedure in DRG 108. In fact, other than heart transplant, heart assist system implant is the most expensive procedure in MDC 5. The average FY 1997 charge for these cases, when assigned to DRG 108, is over $150,000 compared to about $53,000 for all cases in DRG 108. Obviously, the charges for heart assist implant are increasing at a much greater rate than the average charges for DRG 108. In addition, the length of stay for cases coded with 37.66 is approximately 32 days compared to about 11 days for all other DRG 108 cases.

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases with patients who are age 0–17. Occasionally, a pair of DRGs is split between age >17 and age 0–17.

One possibility for improving payment for these cases is to move them to DRGs 104 and 105 (Cardiac Valve Procedures). Those DRGs, which split on the basis of the performance of cardiac catheterization, have average charges of approximately $66,000 and $51,000, respectively. While heart assist implant cases are still more expensive than the average case in these DRGs, payment would be improved. Clinically, placement of heart assist implant in DRGs 104 and 105 is not without precedent. Effective with FY 1988, we placed implant of a total automatic implantable cardioverter defibrillator (AICD) in these DRGs. In addition, the vast majority of procedures assigned to DRG 108 involve surgically splitting open the sternum to perform the procedure. However, implant of the heart assist device does not require this approach.

While reviewing the DRG 108 cases, we also noted that procedure code 35.33 (annuloplasty) is assigned to this DRG. Annuloplasty is a valve procedure and is clinically more similar to the cases assigned to DRGs 104 and 105 than it is to the cases assigned to DRG 108. In addition, the average standardized charge for annuloplasty cases assigned to DRG 108 is about $67,000, well above the overall average charge of approximately $53,000 for cases in DRG 108. Therefore, we are proposing to move annuloplasty from DRG 108 to DRGs 104 and 105.

In order to more accurately reflect the cases assigned to DRGs 104 and 105, we would retitle them as follows:

DRG 104 Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization

DRG 105 Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization.

3. MDC 22 (Burns)

Under the current DRG system, burn cases are assigned to one of six DRGs in MDC 22 (Burns), which have not been revised since 1986. In our FY 1998 hospital inpatient proposed rule (June 2, 1997; 62 FR 29912), in response to inquiries we had received, we indicated that we would conduct a comprehensive review of MDC 22 to determine whether changes in these DRGs could more appropriately capture the variation in resource use associated with different classes of burn patients. We solicited public comments on this issue, particularly asking for recommendations on ways to categorize related diagnosis and procedure codes to produce DRG groupings that would be more homogeneous in terms of resource use.

Among the comments we received was a proposal (endorsed by the American Burn Association (ABA)) for restructuring the DRGs based on several statistical and clinical criteria, including age, severity of the burn, and the presence of complications or comorbidities. Although this proposal was structured for a patient population encompassing all ages of patients, we believed that it showed great promise for Medicare patients as well. During the last several months, we have worked closely with representatives of the ABA and with the clinicians who developed the proposal in order to refine it for Medicare purposes.

Based on this work, we are proposing a new set of DRGs for burn cases. Under this proposal, we would replace the six existing DRGs in MDC 22 with eight new DRGs. For ease of reference and classification, the current DRGs in MDC 22, DRGs 456 through 460 and 472, would no longer be valid, and we would establish new DRGs 504 through 511 to contain all cases that currently group to MDC 22. (The complete titles of the new DRGs are set forth below.)

In reviewing the Medicare burn cases, we found that the most important distinguishing characteristic in terms of resource use was the amount of body surface affected by the burn and how much of that burn was a 3rd degree burn. The second most important factor was whether or not the patient received a skin graft. Thus, a patient with burns covering at least 20 percent of body area, with at least 10 percent of that a 3rd degree burn, consumed the most resources. However, if a patient met these criteria and did not receive a skin graft, then the case was much less expensive and the average length of stay fell from over 30 days to 8 days. The first two proposed burn DRGs would reflect these distinctions (DRGs 504 and 505).

After classifying the most extensive burn cases, we found that the patients with 3rd degree burns that did not meet the criteria to be assigned to DRGs 504 and 505 were the most expensive of the remaining cases (that is, those patients whose burns that did not meet the at least 20 percent body area or at least 10 percent 3rd degree criteria). These burns are referred to clinically as ''full-thickness burns.'' A subset of these full-thickness burn cases, those with skin graft or an inhalation injury, were much more expensive than the other cases. After dividing these patients into two groups, with or without skin graft or inhalation injury, we examined whether other factors had an influence on resource use. We found that patients who had a CC (complication or comorbidity) or a concomitant significant trauma consumed more resources whether or not they had a skin graft or inhalation injury. Thus, the next four DRGs were defined as full-thickness burns with skin graft or inhalation injury with or without CC or significant trauma, or full-thickness burns without skin graft or inhalation injury with or without CC or significant trauma (DRGs 506 through 509).

Finally, the last two proposed DRGs (510 and 511) are for cases with nonextensive burns. These cases are also split on the basis of CCs or concomitant significant trauma.

Consistent with the recommendations of several commenters on last year's proposed rule, the new burn DRGs would no longer include a separate DRG for cases in which burn patients were transferred to another acute care facility. Overall, we estimate that these proposed changes would increase by more than 25 percent the amount of variation in resource use explained by the DRGs in MDC 22. They would also improve the clinical coherence of the cases within each DRG. Thus, we believe that the proposed DRGs would provide for improved payment for cases assigned to MDC 22.

The specific diagnosis and procedure codes that would be included in each of the eight DRGs and their titles are as follows:

DRGs 504 and 505—Extensive 3rd Degree Burns with and without Skin Graft

DRGs 504 and 505 would include all cases with burns involving at least 20 percent of body surface area combined with a 3rd degree burn covering at least 10 percent of body surface area. Thus, these cases would have diagnosis codes of 948.xx, with a fourth digit of 2 or higher (indicating that burn extends over 20 percent or more of body surface) and a fifth digit of 1 or higher (indicating a 3rd degree burn extending over 10 percent or more of body surface). Cases with the appropriate diagnosis codes would be classified into DRG 504 if one of the following skin graft procedure codes is present:

85.82 Split-thickness graft to breast
85.83 Full-thickness graft to breast
85.84 Pedicle graft to breast
86.60 Free skin graft, NOS
86.61 Full-thickness skin graft to hand
86.62 Other skin graft to hand
86.63 Full-thickness skin graft to other sites
86.65 Heterograft to skin
86.66 Homograft to skin
86.67 Dermal regenerative graft (new code in FY 1999—see Table 6A in section V. of the Addendum)
86.69 Other skin graft to other sites
86.70 Pedicle of flap graft, NOS

86.71 Cutting and preparation of pedicle grafts or flaps
86.72 Advancement of pedicle graft
86.73 Attachment of pedicle or flap graft to hand
86.74 Attachment of pedicle or flap graft to other sites
86.75 Revision of pedicle or flap graft
86.93 Insertion of tissue expander

DRGs 506 and 507—Full Thickness Burn with Skin Graft or Inhalation Injury with or without CC or Significant Trauma

These DRGs would include all other cases of 3rd degree burns that also have either a skin graft or an inhalation injury. Thus, these cases would have diagnosis codes of 941.xx through 946.xx, and 949.xx, with a fourth digit of 3 or higher, as well as cases with codes of 948.xx that did not group into DRGs 504 or 505 (that is, 948.00, 948.01, and 948.1x through 948.9x with a fifth digit of 0). In addition, cases classified into DRGs 506 and 507 must have either one of the skin graft procedure codes listed above or one of the following diagnosis codes for inhalation injuries:

518.5 Pulmonary insufficiency following trauma and surgery
518.81 Respiratory failure
518.84 Acute and chronic respiratory failure (new code in FY 1999—see Table 6A in section V. of the Addendum)
947.1 Burn of larynx, trachea, or lung
987.9 Toxic effect of gas, fume, or vapor, NOS

Cases that meet both of these coding criteria would be assigned to DRG 506 if there is a diagnosis code indicating either a CC (based on the standard DRG CC list) or concomitant significant trauma (based on the significant trauma diagnosis codes, listed by body site, used for classification in MDC 24).

DRGs 508 and 509—Full Thickness Burn without Skin Graft or Inhalation Injury with or without CC or Significant Trauma

These DRGs would include all other cases of 3rd degree burns. Thus, these DRGs would include all cases without a skin graft or inhalation injury that have diagnosis codes of 941.xx through 946.xx, and 949.xx, with a fourth digit of 3 or higher, as well as cases with codes of 948.xx that did not group into DRGs 504 or 505. DRG 508 would also require a secondary diagnosis from the standard CC list or the trauma list based on the significant trauma diagnosis codes, listed by body site, used for classification in MDC 24.

DRGs 510 and 511—Nonextensive Burns with and without CC or Significant Trauma

The remaining burn cases would be classified into one of these two DRGs, depending on whether or not the claim included a diagnosis code reflecting the presence of a CC or a significant trauma, as explained above.

4. Legionnaires' Disease

Effective with discharges occurring on or after October 1, 1997, a new diagnosis code was created for pneumonia due to Legionnaires' disease (code 482.84). In the August 29, 1997 final rule with comment period, we assigned this code to DRGs 79, 80, and 81 (Respiratory Infections and Inflammations) (62 FR 46090). However, we did not include this code as a human immunodeficiency virus (HIV) major related condition in MDC 25 (HIV Infections). Because pneumonia due to Legionnaires' disease is a serious respiratory condition that has a deleterious effect on patients with HIV, we are proposing to assign diagnosis code 482.84 to DRG 489 (HIV with Major Related Condition) as a major related condition. In addition, we did not assign the code as a major problem in DRGs 387 (Prematurity with Major Problems) and 389 (Full Term Neonate with Major Problems). These DRGs are assigned to MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period). Again, as a part of this proposed rule, we would assign diagnosis code 482.84 as a major problem in DRGs 387 and 389 because of its effect on resource use in treating newborns.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class ''heart transplant'' consists of a single DRG (DRG 103) and the class ''major cardiovascular procedures'' consists of two DRGs (DRGs 110 and 111). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of ''other OR procedures'' as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the ''other OR procedures'' surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The ''other OR procedures'' class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if

no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time this proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed below in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat) as follows:

- We would reorder Sinus and Mastoid Procedures (DRGs 53–54) above Myringotomy with Tube Insertion (DRGs 61–62).
- We would reorder Mouth Procedures (DRGs 168–169) above Tonsil and Adenoid Procedure Except Tonsillectomy and/or Adeniodectomy Only (DRGs 57–58).

6. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered CCs. We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we do not propose to delete any of the diagnosis codes on the CC list.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of CCs for closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the FY 1993 revision (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); the September 1, 1995 final rule for the FY 1996 revisions (60 FR 45782); the August 30, 1996 final rule for the FY 1997 revisions (61 FR 46171); and the August 29, 1997 final rule for the FY 1998 revisions (62 FR 45966)).

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1998. (See section II.B.8, below, for a discussion of ICD–9–CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6F and 6G in section V. of the Addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1998. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1998, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6G—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1998 the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $92.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which

should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road; Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998) and those in Tables 6F and 6G of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1998.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 15.0, is available for $195.00, which includes $15.00 for shipping and handling. Version 16.0 of this manual, which will include the final FY 1999 DRG changes, will be available in October 1998 for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, September 1, 1995, August 30, 1996, and August 29, 1997, we moved several other procedures from DRG 468 to 477, as well as moving some procedures from DRG 477 to 468. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, 60 FR 45783, 61 FR 46173, and 62 FR 45981, respectively.)

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes; therefore, we are not proposing to move any procedures from DRGs 468 and 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGS 468 or 476.

8. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. That mission includes 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 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 Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases* while HCFA has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures.*

The Committee encourages participation in the above process by health-related organizations. 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 fields, 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 in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on June 5 and December 4 and 5, 1997, and finalized the coding changes after consideration of comments received at the meetings and in writing

within 30 days following the December 1997 meeting. The initial meeting for consideration of coding issues for implementation in FY 2000 will be held on June 4, 1998. Copies of the minutes of the 1997 meetings can be obtained from the HCFA Home Page @ http://www.hcfa.gov/pubaffr.htm, under the ''What's New'' listing. Paper copies of these minutes are no longer available and the mailing list has been discontinued. 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, Maryland 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; HCFA, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, Division of Acute Care; C5–06–27; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD–9–CM code changes that have been approved will become effective October 1, 1998. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in section V. of the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classifications.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, other codes, or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1998. The corresponding new or expanded diagnosis codes are included in Table 6A. Procedure codes that have been replaced by expanded codes, other codes, or have been deleted are in Table 6D (Invalid Procedure Codes). Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also include the proposed DRG assignments for these revised codes. For FY 1999, there are no revisions to procedure code titles.

9. Other Issues—

a. Palliative Care. Effective October 1, 1996 (FY 1997), we introduced a diagnosis code to allow the identification of those cases in which palliative care was delivered to a hospital inpatient. This code, V66.7 (Encounter for palliative care), was unusual in that there had been no previous code assignment that included the concept of palliative care. Since this was a new concept, instructional materials were developed and distributed by the AHA as well as specialty groups on the use of this new code. With new codes, it sometimes takes several years for physician documentation to improve and for coders to become accustomed to looking for this type of information in order to assign a code. There is an inclusion note listed under V66.7 which indicates that this code should be used as a secondary diagnosis only; the patient's medical problem would always be listed first. Currently, use of diagnosis code V66.7 does not have an impact on DRG assignment. Consistent with prior practice, we have waited until the FY 1997 data became available for analysis before considering any possible modifications to the DRGs.

In analyzing the FY 1997 bills received through September 1997, we found that 4,769 discharges included V66.7 as a secondary diagnosis. These cases were widely distributed throughout 199 DRGs. The vast majority of these DRGs included five or fewer discharges with use of palliative care. Only 12 DRGs included more than 100 cases. These were the following:

DRG	Title	Number of cases
10	Nervous System Neoplasms with CC	144
14	Specific Cerebrovascular Disorders Except TIA	272
79	Respiratory Infections and Inflammations Age >17 with CC	139
82	Respiratory Neoplasms	526
89	Simple Pneumonia and Pleurisy Age >17 with CC	200
127	Heart Failure and Shock	184
172	Digestive Malignancy with CC	226
203	Malignancy of Hepatobiliary System or Pancreas	285
239	Pathological Fractures and Musculoskeletal and Connective Tissue Malignancy	218
296	Nutritional and Miscellaneous Metabolic Disorders Age >17 with CC	173
403	Lymphoma and Non-Acute Leukemia with CC	178
416	Septicemia Age >17	147

Six of these DRGs are cancer-related; however, the other DRGs are quite diverse. Upon further analysis, we found that, for the most part, discharges with code V66.7 do not significantly differ in length of stay from the discharges in the same DRG without code V66.7. Discharges with code V66.7 are sometimes longer and sometimes shorter and the comparative length of stay for a given DRG tends to vary by only one day. In general, the average charges for a palliative care case discharge with a secondary code of V66.7 were lower than the charges for other discharges within the DRG. However, these differences were relatively small and were well within the standard variation of charges for cases in the DRG.

One approach we could take to revise the DRGs would be to divide those DRGs with a large number of cases coded with V66.7 into two different DRGs, with and without palliative care. However, the relatively small proportion of cases in each DRG argues against this approach; no DRG has more than 1 percent of its cases coded with palliative care and, in most cases, the percentage is well under 1 percent. An alternative approach would be to group all palliative care cases, regardless of the underlying disease or condition, into one new DRG. However, the charges of these cases are so varied that this is not a logical choice. In addition, there is a lack of clinical coherence in such an approach. The underlying diagnoses of

these cases range from respiratory conditions to heart failure to septicemia. Because there are so few cases in the FY 1997 data and they are so widely dispersed among different DRGs, we are not proposing a DRG modification at this time. We will make a more detailed analysis of these cases over the next year based on a more complete FY 1997 data file as well as review of the FY 1998 cases that will be available later this year. As time goes by, hospital coders and physicians should become more aware of this code and we hope that more complete data will assist our decision making process.

b. PTCA. Effective with discharges occurring on or after October 1, 1997, we reassigned cases of PTCA with coronary artery stent implant from DRG 112 to DRG 116. In the August 29, 1997 final rule with comment period, we responded to several commenters who contended that PTCA cases treated with platelet inhibitors were as resource intensive as the PTCA with stent implant cases and that these cases should also be moved to DRG 116. However, there is currently no code that describes the infusion of platelet inhibitors. Therefore, we were unable to make any changes in the DRGs for FY 1998.

As set forth in Table 6B, New Procedure Codes in section V. of the addendum to this proposed rule, a new procedure code for injection or infusion of platelet inhibitors (code 99.20) will be effective with discharges occurring on or after October 1, 1998. Our usual policy on new codes is to assign them to the same DRG or DRGs as their predecessor code. Because infusion of platelet inhibitors is currently assigned to a non-OR procedure code, we followed our usual practice and designated code 99.20 as a non-OR code that does not affect DRG assignment.

We will not have any data on this new code until we receive bills for FY 1999. Thus, we would be unable to make any changes in DRG assignment until FY 2001. We note, however, that the Conference Report that accompanied the Balanced Budget Act of 1997 contained language stating that ''* * * in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the Conferees believe that HCFA should consider, to the extent feasible, reliable, validated data other than MedPAR data in annually recalibrating and reclassifying the DRGs.'' (H.R. Rep. No. 105–217.734). At this time, we have received no data that would allow us to make an appropriate modification of DRG 112 for PTCA cases with platelet infusion therapy. When we develop the final rule, we will review and analyze any data we receive about the use of platelet inhibitors for Medicare beneficiaries. If we believe that the data are adequate to allow identification of the percentage of cases in DRG 112 that receive this therapy and the charge and length of stay data convince us that these cases should be moved, we will consider such a move effective for discharges occurring on or after October 1, 1998.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 1999 recalibration as we did for FY 1998. (See the August 29, 1997 final rule with comment (62 FR 45982).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1997 MedPAR file, rather than the FY 1996 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1997 MedPAR data, based on bills received by HCFA through December 1997, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1997 MedPAR file includes data for approximately 11.2 million Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 1997 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed above in section II.B of this preamble. As noted in section II.B.5, due to the unavailability of revised GROUPER software, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria as was used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1995 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for heart and heart-lung transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 1999. Using the FY 1997 MedPAR data set, there are 38 DRGs that contain fewer than 10 cases. We computed the weights for the 38 low-volume DRGs by adjusting the FY 1998 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the proposed DRG classification

changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts ''for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.'' In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprised of two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA.

We note that effective April 1, 1990, the term Metropolitan Area (MA) replaced the term Metropolitan Statistical Area (MSA) (which had been used since June 30, 1983) to describe the set of metropolitan areas comprised of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Section 1886(d)(3)(E) of the Act also requires that the wage index be updated annually beginning October 1, 1993. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. We also adjust the wage index, as discussed below in section III.F, to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

B. FY 1999 Wage Index Update

The proposed FY 1999 wage index in section V of the Addendum (effective for hospital discharges occurring on or after October 1, 1998 and before October 1, 1999) is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1995 (the FY 1998 wage index was based on FY 1994 wage data). The proposed FY 1999 wage index includes the following categories of data, which were also included in the FY 1998 wage index:

- Total salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Direct patient care contract labor costs and hours.

The proposed wage index also continues to exclude the direct salaries and hours for nonhospital services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system. Finally, as discussed in detail in the August 29, 1997 final rule with comment period, we would calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041) This wage index is based solely on Puerto Rico's data.

For FY 1999 we are proposing to include two changes to the categories: we will add contract labor costs and hours for top management positions and replace the fringe benefit category with the wage-related costs associated with hospital and home office salaries category. These two changes reflect changes to the Medicare cost report that were implemented in the FY 1995 hospital prospective payment system September 1, 1994 final rule with comment period (59 FR 45355). The changes were made to the cost report for cost reporting periods beginning during FY 1995. Because we are using wage data from the FY 1995 cost report for the proposed FY 1999 wage index, these two changes will be reflected in the wage index for the first time in FY 1999.

As discussed in detail in the September 1, 1994 final rule with comment period (59 FR 45355), we expanded the definition of contract services reported on the Worksheet S–3 to include the labor-related costs associated with contract personnel in a hospital's top four management positions: Chief Executive Officer (CEO)/Hospital Administrator, Chief Operating Officer (COO), Chief Financial Officer (CFO), and Nursing Administrator. We also revised the cost report to reflect a change in terminology from ''fringe benefits'' to ''wage-related costs,'' to promote the consistent reporting of these costs. (See September 1, 1994 final rule with comment period 59 FR 45356–45359.) We made this change in terminology because we believe that it will eliminate confusion regarding those wage-related costs that are incorporated in the wage index versus the broader definition of fringe benefits recognized under the Medicare cost reimbursement principles. Wage-related costs, which include core and other wage-related costs, are reported on the Form HCFA–339, the Provider Cost Report Reimbursement Questionnaire.

Finally, we have analyzed the wage data for the following costs, which were separately reported for the first time on the FY 1995 cost reports:

- Physician Part A costs.
- Resident and Certified Registered Nurse Anesthetist (CRNA) Part A costs.
- Overhead cost and hours by cost center.

Our analysis and proposals concerning these data are set forth below in section III.C.

C. Proposals Concerning the FY 1999 Wage Index

1. Physician Part A Costs.

Currently, if a hospital directly employs a physician, the Part A portion of the physician's salary and wage-related costs (that is, administrative and teaching service) is included in the calculation of the wage index. However, the costs for contract physician Part A services are not included. Our policy has been that, to be included in the wage index calculation, a contracted service must be related to direct patient care, or, beginning with the FY 1999 wage index, top level management (see discussion above). Because some States have laws that prohibit hospitals from directly hiring physicians, the hospitals in those States have claimed that they are disadvantaged by the wage index's exclusion of contract physician Part A costs. We began collecting separate wage data for both direct and contract physician Part A services on the FY 1995 cost report in order to analyze this issue. As we discussed in the September 1, 1994 final rule with comment period (59 FR 45354), our original purpose in collecting these data was to exclude all Part A physician costs from the wage index.

When we made the change to the cost report, there were five States in which hospitals were prohibited from directly employing physicians. We understand that only two States currently maintain this prohibition: Texas and California. Thus, the number of hospitals affected by our current policy has decreased. Nevertheless, the fact that hospitals in these two States are still prohibited from directly employing physicians for Part A services and, therefore, must enter into contractual agreements with physicians for these services, perpetuates the perceived inequity.

The main reasons we planned to exclude all Part A physician costs rather than include the contract costs was our concern that it would be difficult to accurately attribute the Part A costs and hours of these contract physicians and including these costs could inappropriately inflate the hospitals' average hourly wages. That is, we anticipated that average costs for contract physicians would be significantly higher than the costs for those physicians directly employed by the hospital. However, our analysis of the data shows that the average hourly wages for contract physician Part A costs are very similar to, and, in fact slightly lower than, the costs for salaried Part A physician services.

Based on this result, we believe that continuing to include the direct physician Part A costs and adding the costs for contract physicians would be the better policy. Thus, we are proposing to calculate the FY 1999 wage index including both direct and contract physician Part A costs.

Of the 5,115 hospitals included in the FY 1995 wage data file, approximately 23 percent reported contract physician Part A costs. Including these costs would raise the wage index values for one MSA (2 hospitals) by more than 5 percent and 5 MSAs (60 hospitals) by between 2 and 5 percent. One Statewide rural area (68 hospitals) would experience a decrease between 2 and 5 percent. The wage index values for the remaining 365 areas (5,055 hospitals) would be relatively unaffected, experiencing changes of between -2 and 2 percent. We understand that an unusually large number of hospitals have requested changes to these wage data; therefore, there may be relatively significant differences between the wage data file used to calculate the proposed wage index and the final corrected wage data in the file used to calculate the final wage index. Because of this, we will reevaluate our decision based on that final wage data, which will be submitted by April 6, 1998. If we find significant differences in the contract labor costs, we may reconsider our proposal.

2. Resident and CRNA Part A Costs

The wage index presently includes salaries and wage-related costs for residents in approved medical education programs and for CRNAs employed by hospitals under the rural pass-through provision. However, Medicare pays for these costs outside the prospective payment system. Removing these costs from the wage index calculation would be consistent with our general policy to exclude costs that are not paid through the prospective payment system, but, because they were not separately identifiable, we could not remove them.

In the September 1, 1994 final rule with comment period (59 FR 45355), we stated that we would begin collecting the resident and CRNA wage data separately and would evaluate the data before proposing a change in computing the wage index. However, there were data reporting problems associated with these costs on the FY 1995 cost report. The original instructions for reporting resident costs on Line 6 of Worksheet S–3, Part III, erroneously included teaching physician salaries and other teaching program costs from Worksheet A of the cost report. Although we issued revised instructions to correct this error, we now understand these revisions may not have been uniformly instituted. Another issue relating to residents' salaries stems from apparent underreporting of these costs by hospitals and inconsistent treatment of the associated wage-related costs.

In addition, the original Worksheet S–3 and reporting instructions did not provide for the separate reporting of CRNA wage-related costs. Another issue with the FY 1995 wage data is the inclusion of contract CRNA Part A costs in the contract labor costs reported on Worksheet S–3. We believe that much of the CRNA Part A costs are reported under contract labor, rather than under salaried employee costs, due to the heavy use of contract labor by rural hospitals. We do not believe that it would be feasible at this time to try to remove these CRNA Part A costs from the contract labor costs. We improved the reporting instructions for CRNA costs on the FY 1996 cost report.

Our analysis of the CRNA and resident wage data submitted on the FY 1995 cost report convinces us that these data are inaccurately and incompletely reported by hospitals. For example, although there are over 900 teaching hospitals receiving graduate medical education payments, only about 800 hospitals reported resident cost data. Because we do not want to make a relatively significant change in the wage index data calculation without complete and accurate data upon which to base our decision, we are proposing to delay any decision regarding excluding resident and CRNA costs from the wage index until at least next year. We will review the FY 1996 data when it becomes available later this year and present our analysis and any proposals in next year's proposed rule.

3. Overhead Allocation

Prior years' wage index calculations have excluded the direct wages and hours associated with certain subprovider components that are excluded from the prospective payment system; however, the overhead costs associated with excluded components have not been removed. We have previously attempted to remove the overhead costs associated with these excluded areas of the hospital on two separate occasions. Based on the quality of the data, as well as comments we received from the public, these proposals were never implemented.

In the September 1, 1995 final rule with comment period (60 FR 45797), we discussed the results of the second of these efforts. Our analysis was prompted by several suggestions from hospital representatives that the current methodology, which removes the higher

nursing costs in excluded areas from the hospital's direct salaries but leaves in the lower general services salaries, negatively distorts wages. However, the results of our analysis at that time dissuaded us from proposing to exclude these areas' overhead costs because the data were unreliable. We revised the FY 1995 cost report to allow for the reporting of the overhead salaries and hours. We stated that we would reexamine this issue when the FY 1995 cost report data became available.

To allocate overhead costs based on the data reported on Worksheet S–3, we first determined the ratio of the hours reported directly to excluded areas compared to the total hours. Total overhead hours and salaries were then multiplied by this ratio to allocate the proportion of overhead costs attributable to excluded areas. Next, the overhead hours and salaries attributable to excluded areas were subtracted from the hospital's total hours and salaries, and an average hourly wage reflecting this overhead allocation was computed.

Of the 5,115 hospitals in the FY 1995 wage data file, 3,661 reported overhead hours (hospitals were only required to separately report overhead hours if their number of directly assigned excluded hours exceeded 5 percent of their total hours). The overhead allocation would result in an increase in the wage index value of more than 5 percent for only one MSA (2 hospitals). A total of 12 labor areas (5 Statewide rural (206 hospitals) and 7 MSAs (25 hospitals)) would experience an increase of between 2 percent and 5 percent. Only one MSA (29 hospitals) would experience a decline of between 2 and 5 percent. The wage index value for the remaining 358 areas (4,921 hospitals) would be affected by less than 2 percent.

We are proposing to include this exclusion of overhead allocation in the calculation of the FY 1999 wage index. Although the overall impact on hospitals of this change is relatively small, we believe it is an appropriate step toward improving the overall consistency of the wage index. Additionally, we believe this change will significantly increase the accuracy of the wage data for individual hospitals, especially hospitals that have a relatively small portion of their facility devoted to acute inpatient care.

D. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 1999 wage index were obtained from Worksheet S–3, Parts III and IV of the FY 1995 Medicare cost reports. The data file used to construct the proposed wage index includes FY 1995 data submitted to the Health Care Provider Cost Report Information System (HCRIS) as of early January 1998. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

Of the 5,123 hospitals originally in the data file, 851 hospitals had data elements that failed an edit. From mid-January to mid-February 1998, intermediaries contacted hospitals to revise or verify data elements that resulted in the edit failures.

As of February 17, 1998, 31 hospitals still had unresolved data elements. These unresolved data elements are included in the calculation of the proposed FY 1999 wage index pending their resolution before calculation of the final FY 1999 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data (through HCRIS) no later than April 6, 1998. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we deleted data for eight hospitals that failed edits. For two of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. The data from the remaining six participating hospitals were removed because inclusion of their data would have significantly distorted the wage index values. The data for these six hospitals will be included in the final wage index if we receive corrected data that passes our edits. As a result, the proposed FY 1999 wage index is calculated based on FY 1995 wage data for 5,115 hospitals.

E. Computation of the Wage Index

The method used to compute the proposed wage index is as follows:

Step 1—As noted above, we are proposing to base the FY 1999 wage index on wage data reported on the FY 1995 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts III and IV of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1994 and before October 1, 1995. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1994 and reported a cost reporting period exceeding 52 weeks. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1995 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To determine total salaries plus wage-related costs, we added the costs of contract labor for direct patient care, certain top management, and physician Part A services; hospital wage-related costs, and any home office salaries and wage-related costs reported by the hospital, to the net hospital salaries. The actual calculation is the sum of lines 2, 4, 6, and 33 of Worksheet S–3, Part III. This calculation differs from the one computed on line 32 of Worksheet S–3, Part III. Therefore, a hospital's average hourly wage calculated under Step 2 will be different from the average hourly wage shown on line 32, column 5.

Step 3—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. To determine total hours, we increased the net hours by the addition of home office hours and hours for contract labor attributable to direct patient care, certain top management, and physician Part A salaries.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs. First, we determined the ratio of excluded area hours (Line 24 of Worksheet S–3, Part III) to revised total hours (Line 9 of Worksheet S–3, Part III, adding back CRNA Part A, physician Part A, and resident hours). Second, we computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 16 of Worksheet S–3, Part IV. Finally, we subtracted the computed overhead salaries and hours associated with excluded areas from the total salaries and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage inflation adjustment, we estimated the percentage change in the employment

cost index (ECI) for compensation for each 30-day increment from October 14, 1994 through April 15, 1996, for private industry hospital workers from the Bureau of Labor Statistics *Compensation and Working Conditions.* For previous wage indexes, we used the percentage change in average hourly earnings for hospital industry workers to make the wage inflation adjustment. For FY 1999 we are proposing to use the ECI for compensation for private industry hospital workers because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries, which is what the average hourly earnings category reflected. In addition, the ECI includes managers as well as other hospital workers. We are also proposing to change the methodology used to compute the monthly update factors. This new methodology uses actual quarterly ECI data to determine the monthly update factors. The methodology assures that the update factors match the actual quarterly and annual percent changes. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/94	11/15/94	1.032882
11/14/94	12/15/94	1.030771
12/14/94	01/15/95	1.028721
01/14/95	02/15/95	1.026731
02/14/95	03/15/95	1.024776
03/14/95	04/15/95	1.022827
04/14/95	05/15/95	1.020886
05/14/95	06/15/95	1.018901
06/14/95	07/15/95	1.016822
07/14/95	08/15/95	1.014649
08/14/95	09/15/95	1.012446
09/14/95	10/15/95	1.010279
10/14/95	11/15/95	1.008146
11/14/95	12/15/95	1.006047
12/14/95	01/15/96	1.003981
01/14/96	02/15/96	1.001950
02/14/96	03/15/96	1.000000
03/14/96	04/15/96	0.998181

For example, the midpoint of a cost reporting period beginning January 1, 1995 and ending December 31, 1995 is June 30, 1995. An inflation adjustment factor of 1.016822 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1995 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area prior to any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the Nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $20.6036.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $9.3339 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the hospital wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate prospective payment system payments are not greater or less than those which would have been made in the year if this section did not apply. For FY 1999, this change affects 229 hospitals in 34 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote.

F. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to that combined wage index value.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding

the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.

• The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas where redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4a have no hospitals remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The proposed revised wage index values for FY 1999 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural areas of the State in which the hospital is located, the redesignated hospital receives the higher wage index value, that is, the wage index value for the rural areas of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4D and 4E list the average hourly wage for each labor market area, prior to the redesignation of hospitals, based on the FY 1995 wage data. In addition, Table 3C in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital based on the FY 1995 data (as calculated from Steps 4 and 5, above). The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(w)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index. Hospitals that choose to apply before publication of the final rule may use the proposed wage data in applying to the MGCRB for wage index reclassifications that would be effective for FY 2000. We note that in adjudicating these wage index reclassification requests during FY 1999, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 1999 wage index.

At the time this proposed wage index was constructed, the MGCRB had completed its review. The proposed FY 1999 wage index values incorporate all 435 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act) for FY 1999. The final number of reclassifications may be different because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule. The changes may affect not only the wage index value for specific geographic areas, but also whether redesignated hospitals receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this **Federal Register** document. The request for withdrawal of an application for reclassification that would be effective in FY 1999 must be received by the MGCRB by June 22, 1998. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

G. Requests for Wage Data Corrections

As a part of the August 29, 1997 final rule with comment period, we implemented a new timetable for requesting wage data corrections (62 FR 45990). In February 1998, we notified hospitals again of these changes through a memorandum to the fiscal intermediaries. To allow hospitals time to evaluate the wage data used to construct the proposed FY 1999 hospital wage index, we made available to the public a data file containing the FY 1995 hospital wage data. In a memorandum dated February 2, 1998, we instructed all Medicare intermediaries to inform the prospective payment hospitals that they serve of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available February 6, 1998, through the Internet at HCFA's home page (http://www.hcfa.gov). The intermediaries were also instructed to advise hospitals of the alternative availability of these data through their representative hospital organizations or directly from HCFA. Additional details on ordering this data file are discussed in section IX.A of this preamble, ''Requests for Data from the Public.''

In addition, Table 3C in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values. A hospital can verify its adjusted average hourly wage, as calculated from Steps 4 and 5 of the computation of the wage index (see section III.E of this preamble, above) based on the wage data on the hospital's cost report (after taking into account any adjustments made by the intermediary), by dividing the adjusted average hourly wage in Table 3C by the applicable wage adjustment factors as set forth above in Step 5 of the computation of the wage index. As noted above, however, a hospital's average hourly wages using this calculation will vary from the average hourly wages shown on Line 32 of Worksheet S–3, Part III. An updated Table 3C (along with applicable wage adjustment factors) will be included in the final rule.

We believe hospitals have had ample time to ensure the accuracy of their FY 1995 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. However, if after review of the wage data file released February 6, a hospital believed that its FY 1995 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by March 9, 1998. To be reflected in the final wage index, any wage data corrections must be reviewed and verified by the intermediary and transmitted to HCFA on or before April 6, 1998. These deadlines are necessary

to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by August 1, 1998. We cannot guarantee that corrections transmitted to HCFA after April 6 will be reflected in the final wage index.

After reviewing requested changes submitted by hospitals, intermediaries transmitted any revised cost reports to HCRIS and forwarded a copy of the revised Worksheet S–3, Parts III and IV to the hospitals. If requested changes were not accepted, fiscal intermediaries notified hospitals of the reasons why the changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's resolution of a requested change, the hospital may contact HCFA in an effort to resolve policy disputes. We note that the April 6 deadline also applies to these requested changes. We will not consider factual determinations at this time as these should have been resolved earlier in the process.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 1999 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage corrections or to dispute the intermediary's decision with respect to requested changes.

We note that, beginning this year with the FY 1999 wage index, the final wage index that is published August 1 will incorporate all corrections, including those to correct data entry or tabulation errors of the final wage data by the intermediary or HCFA. The final wage data public use file will be released by May 7, 1998. Hospitals will have until June 5, 1998, to submit requests to correct errors in the final wage data due to data entry or tabulation errors by the intermediary or HCFA. The correction requests that will be considered after the March 9 deadline will be limited to errors in the entry or tabulation of the final wage data which the hospital could not have known about prior to March 9, 1998.

The final wage data file released in early May will contain the wage data that will be used to construct the wage index values in the final rule. As with the file made available in February, HCFA will make the final wage data file released in May available to hospital associations and the public (on the Internet). This file, however, is being made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the correction process described above (with the March 9 deadline), not for the initiation of new wage data correction requests. Hospitals are encouraged to review their hospital wage data promptly after the release of the final file.

If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be received by HCFA and the intermediaries no later than June 5, 1998. Requests mailed to HCFA should be sent to: Health Care Financing Administration; Center for Health Plans and Providers; Attention: Stephen Phillips, Technical Advisor; Division of Acute Care; C5–06–27; 7500 Security Boulevard; Baltimore, MD 21244–1850. Each request also must be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact HCFA immediately to discuss its findings.

At this time, changes to the hospital wage data will be made only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor HCFA will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCRIS on or before April 6, 1998.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 1998 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 5, 1998) will be incorporated into the final wage index to be published by August 1, 1998, and effective October 1, 1998.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the intermediary's attention. Moreover, because hospitals will have access to the final wage data by early May, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 1999 wage index by August 1, 1998, and the implementation of the FY 1999 wage index on October 1, 1998. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that errors should occur after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) That the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1999 (that is, by the June 5, 1998 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

IV.–V. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs

A. Definition of Transfers (§ 412.4)

Pursuant to section 1886(d)(5)(I) of the Act, the prospective payment system distinguishes between ''discharges,'' situations in which a patient leaves an acute care (prospective payment) hospital after receiving complete acute care treatment, and ''transfers,'' situations in which the patient is transferred to another acute care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation, irrespective of the length of time the patient spent in the ''sending'' hospital prior to transfer, a strong incentive to increase transfers would be created, thereby unnecessarily endangering

patients' health. Therefore, our policy, which is set forth in the regulations at § 412.4, provides that, in a transfer situation, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Currently, the per diem rate paid to a transferring hospital is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the geometric mean length of stay for the DRG into which the case falls. Hospitals receive twice the per diem for the first day of the stay and the per diem for every following day up to the full DRG amount. Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria established for all other cases (nontransfer and transfer cases alike) classified to the DRG. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) and DRG 456 (Burns, Transferred to Another Acute Care Facility), which receive the full DRG payment instead of being paid on a per diem basis.

Under section 1886(d)(5)(J) of the Act, which was added by section 4407 of the Balanced Budget Act of 1997, a ''qualified discharge'' from one of 10 DRGs selected by the Secretary to a postacute care provider will be treated as a transfer case beginning with discharges on or after October 1, 1998. Section 1886(d)(5)(J)(iii) confers broad authority on the Secretary to select 10 DRGs ''based upon a high volume of discharges classified within such group and a disproportionate use of'' certain post discharge services. Section 1886(d)(5)(J)(ii) defines a ''qualified discharge'' as a discharge from a prospective payment hospital of an individual whose hospital stay is classified in one of the 10 selected DRGs if, upon such discharge, the individual—

- Is admitted to a hospital or hospital unit that is not a prospective payment system hospital;
- Is admitted to a skilled nursing facility; or
- Is provided home health services by a home health agency if the services relate to the condition or diagnosis for which the individual received inpatient hospital services and if these services are provided within an appropriate period as determined by the Secretary.

The Conference Agreement that accompanied the law noted that ''(t)he Conferees are concerned that Medicare may in some cases be overpaying hospitals for patients who are transferred to a post acute care setting after a very short acute care hospital stay. The Conferees believe that Medicare's payment system should continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust PPS [prospective payment system] payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting.'' (H.R. Rep. No. 105–217, 740.) In its March 1, 1997 report, ProPAC expressed similar concerns: ''* * * length of stay declines have been greater in DRGs associated with substantial postacute care use, suggesting a shift in care from hospital inpatient to postacute settings'' (pp. 21–22).

In fact, based on the latest available data, overall Medicare hospital costs per case have decreased during FYs 1994 and 1995. This unprecedented real decline in costs per case has led to historically high Medicare operating margins (over 10 percent on average). Along with these declining lengths of stay and costs per case, there has been an increase in the utilization of postacute care. In 1990, the rate of skilled nursing facility services per 1,000 Medicare enrollees was 19. By 1995, it had grown to 33. Corresponding numbers for home health agency services are 58 per 1,000 Medicare enrollees during 1990 and 93 per 1,000 enrollees during 1995. Although home health services are not always directly related to a hospitalization episode, there does appear to be a trend toward increased use of home health for the provision of postacute care rehabilitation services. Previous analysis of the percentage of hospital discharges that receive postacute home health care showed a 10.3 percent increase in 1994 compared to 1992.

Our proposals to implement section 1886(d)(5)(J) of the Act are set forth below.

1. Selection of 10 DRGs

Section 1886(d)(5)(J)(iii)(I) of the Act provides that the Secretary select 10 DRGs based on a high volume of discharges to postacute care and a disproportionate use of postacute care services. Therefore, in order to select the DRGs to be paid as transfers, we first identified those DRGs with the highest percentage of postacute care.

We used the FY 1996 MedPAR file because the complete FY 1997 MedPAR file was not available at the time we conducted our analysis. To identify postacute care utilization, we merged hospital inpatient bill files with postacute care bill files matching beneficiary identification numbers and discharge and admission dates. We created this file rather than depend on information concerning discharge destination on the inpatient bill because we have found that the discharge destination codes included on the hospital bills are often inaccurate in identifying discharges to a facility other than another prospective payment hospital.

Section 1886(d)(5)(J)(ii)(III) of the Act requires the Secretary to choose an appropriate window of days in which the home health services start in order for the discharge to meet the definition of a transfer. In order to include postdischarge home health utilization in our analysis, we identified all hospital discharges for patients who received any home health care within 7 days after the date of discharge. (As described below in section IV.A.2., we ultimately decided to propose 3 days as the window for home health services.)

Starting with the DRG with the highest percentage of postacute care discharges and continuing in descending order, we selected the first 20 DRGs that had a relatively large number of discharges to postacute care (our lower limit was 14,000 cases). In order to select 10 DRGs from the 20 DRGs on our list, for each of the DRGs we considered the volume and percent age of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. The following table lists the 10 DRGs we are proposing to include under our expanded transfer definition, their percentage of postacute utilization compared to total cases, and the total number of cases identified as going to postacute care.

DRG	Title and type of DRG (surgical or medical)	Percent of postacute utilization	Number of postacute cases
14	Specific Cerebrovascular Disorders Except Transient Ischemic Attack (Medical)	49.5	186,845
113	Amputation for Circulatory System Disorders Excluding Upper Limb and Toe (Surgical)	59.0	28,402
209	Major Joint Limb Reattachment Procedures of Lower Extremity (Surgical)	71.9	257,875
210	Hip and Femur Procedures Except Major Joint Age >17 With CC (Surgical)	77.8	111,799
211	Hip and Femur Procedures Except Major Joint Age >17 Without CC (Surgical)	74.2	19,548
236	Fractures of Hip and Pelvis (Medical)	61.2	24,498
263	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis With CC (Surgical)	49.4	14,499
264	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis W/O CC (Surgical)	39.3	1,328
429	Organic Disturbances and Mental Retardation (Medical)	45.4	19,314
483	Tracheostomy Except for Face, Mouth and Neck Diagnoses (Surgical)	45.3	18,254

We included DRG 263 on the list because of its ranking in the top 20 DRGs in terms of postacute utilization and volume of discharges to postacute care. DRGs 263 and 264 are paired DRGS; that is, the only difference in the cases assigned to DRG 263 as opposed to DRG 264 is that the patient has a complicating or comorbid condition. If we included only DRG 263 in the list, it would be possible for a transfer case with a relatively short length of stay that should be assigned to DRG 263 and receive a relatively small transfer payment to be assigned instead to DRG 264, and receive the full DRG payment, simply by failing to include the CC diagnosis code on the bill. Therefore, our choice was to either delete DRG 263 from the list or add DRG 264. We decided to include DRG 264 in the proposed list because DRG 263 fully meets all the conditions for inclusion on the list of 10 DRGS.

2. Postacute Care Settings

Section 1886(d)(5)(J)(ii) of the Act requires the Secretary to define and pay as transfers cases from one of 10 DRGs selected by the Secretary if the individual is discharged to one of the following settings:

- A hospital or hospital unit that is not a subsection [1886](d) hospital, that is a hospital or unit excluded from the inpatient prospective payment system.
- A skilled nursing facility that is, a facility that meets the definition of a skilled nursing facility set forth at section 1819 of the Act.
- Home health services provided by a home health agency, if the services are related to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

Section 1886(d)(1)(B) of the Act defines the hospitals and hospital units that are excluded from the prospective payment system as the following: psychiatric, rehabilitation, childrens', long-term care, and cancer hospitals and psychiatric and rehabilitation distinct part units of a hospital. Therefore, any discharge from a prospective payment hospital from one of the 10 proposed DRGS that is admitted to one of these types of facilities on the date of discharge from the acute hospital, on or after October 1, 1998, would be considered a transfer and paid accordingly under the prospective payment systems (operating and capital) for inpatient hospital services.

A discharge from a prospective payment hospital to a skilled nursing facility would include cases discharged from one of the 10 DRGS from an inpatient bed in the hospital to a bed in the same hospital that has been designated for the provision of skilled nursing care (a ''swing'' bed). The swing bed provision allows certain small rural hospitals to furnish services in inpatient beds which, if furnished by a skilled nursing facility, would constitute extended care services. In addition, any patient who receives swing-bed services is deemed to have received extended care services as if furnished by a skilled nursing facility. Thus, if swing beds are not included in the transfer policy, those hospitals with swing bed agreements could move patients assigned to one of the 10 selected DRGs as if it were a discharge from an inpatient bed to a swing bed and receive payment. We do not believe that this would be a fair policy in that it would create a payment advantage for swing bed hospitals. Therefore, we are providing in the regulations that a discharge to a swing bed will be paid as a transfer when the patient is classified to one of the 10 selected DRGs.

Section 1886(d)(5)(J)(ii)(III) of the Act states that the discharge of an individual who receives home health services upon discharge will be treated as a transfer if ''such services are provided within an appropriate period (as determined by the Secretary) * * *.'' As discussed above in section IV.A.1, we began our analysis using 7 days (one week) as the time period we would consider. We now believe that 3 days after the date of discharge is a more appropriate timeframe. Based on our analysis of the FY 1996 bills, approximately 90 percent of patients began receiving home health care within 3 days. We are particularly interested in receiving comments on the appropriate period of time in which home health services should begin in the context of the transfer policy.

With regard to an appropriate definition of ''home health services * * * relate[d] to the condition or diagnosis for which the individual received inpatient hospital services * * *'', we considered several possible approaches. Under one approach we could compare the principal diagnosis of the inpatient stay to the diagnosis code indicated on the home health bill, similar to our policy on the 3-day payment window for preadmission services. However, we believe that is far too restrictive in terms of qualifying discharges for transfer payment. In addition, a hospital will not know when it discharges a patient to home health what diagnosis code the home health agency will put on the bill. Therefore, the hospital would not be able to correctly code the inpatient bill as a transfer or discharge.

We also considered proposing that any home health care that begins within the designated timeframe be included ''as related'' in our definition. However, this definition might be too broad and the hospital would not be able to predict which cases should be coded as transfers because the hospital often may not know about home health services that are provided upon discharge but were not ordered or planned for as part of the hospital discharge plan.

We are proposing that home health services would be considered related to the hospital discharge if the patient is discharged from the hospital with a written plan of care for the provision of home health care services from a home health agency. In this way, the hospital would be fully aware of the status of the patient when discharged and could be held responsible for correctly coding the

discharge as a transfer on the inpatient bill. In general, this would mean that the home health service would qualify as a Part A home health benefit under section 1861(tt) of the Act as added by section 4611(b) of the BBA.

We note, however, that we plan to compare inpatient bills with home health service bills for care provided within 3 days after discharge, similar to our current claims edit for hospital to hospital transfers. If we find that home health services were provided within the postdischarge window, the hospital will be notified and the hospital payment adjusted unless the hospital can submit documentation verifying the discharge status of the patient. This will alert hospitals if there are problems with their discharge/transfer billing and allow them to adjust their discharge planning process and billing practices. If we find a continued pattern of a hospital billing for cases from the 10 DRGs as discharges and our records indicate that the patients are receiving postacute care services from an excluded hospital, a skilled nursing facility, or within the 3-day home health service window, the hospitals may be investigated for fraudulent or abusive billing practices.

3. Payment Methodology

The statute does not dictate the payment methodology we must use for these transfer cases. However, section 1886(d)(5)(J)(i) of the Act provides that the payment amount for a case may not exceed the sum of half the full DRG payment amount and half of the payment amount under the current per diem payment methodology.

Based on our analysis comparing the costs per case for the transfers in the 10 DRGs with payments under our current transfer payment methodology, we found that most of the 10 DRGs are appropriately paid using our current methodology (that is, twice the per diem for the first day and the per diem for each subsequent day). In fact, this payment would, on average, slightly exceed costs. However, this is not true of DRGs 209, 210, and 211. For those three DRGs, a disproportionate percentage (about 50 percent) of the costs of the case are incurred on the first day of the stay. Therefore, we are proposing to pay DRGs 209, 210, and 211 based on 50 percent of the DRG payment for the first day of the stay and 50 percent of the per diem for the remaining days of the stay. The other seven DRGs would be paid under the current transfer payment methodology.

In Appendix E to this proposed rule, we have included tables that illustrate, for 9 of the 10 DRGs, the number of total and postacute discharges by length of stay, the geometric mean lengths of stay from FY 1983 through FY 1997, and the estimated average costs and transfer payments by length of stay. (The summary information for DRG 264 was not available at the time of publication because it was not included in the original data file of 20 DRGs used for our analysis.) For DRGs 209, 210, and 211, the payment line is determined on the basis of the alternative payment formula described above.

These tables demonstrate that a very large number of discharges from these 10 DRGs receive postacute care. In addition, the length of stay for these DRGs has decreased sharply over the last several years. We believe that this proposed policy will both decrease the hospitals' financial incentive to discharge patients very early in the stay, often before the full course of acute care treatment has ended, as well as pay the hospital at an appropriate level when it does move patients into postacute care.

We would revise § 412.4 to reflect these proposed policies. In addition, we would delete the reference in current § 412.4(d)(2) to DRG 456 (Burns, Transferred to Another Acute Care Facility) because we are proposing to replace that DRG, as discussed in section II.B.3 of this preamble. There would no longer be any burn DRG with a transfer designation.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts were the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of the three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values, is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values are based on discharges occurring during FY 1997 (October 1, 1996 through September 30, 1997) and include bills posted to HCFA's records through December 1997. Therefore, in addition to meeting other criteria, for hospitals with fewer than 275 beds, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1998, a hospital's case-mix index value for FY 1997 would have to be at least—

- 1.3578; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2533
2. Middle Atlantic (PA, NJ, NY)	1.2499
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3468

Region	Case-mix index value
4. East North Central (IL, IN, MI, OH, WI)	1.2717
5. East South Central (AL, KY, MS, TN)	1.2965
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.2264
7. West South Central (AR, LA, OK, TX)	1.3351
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3752
9. Pacific (AK, CA, HI, OR, WA)	1.3405

The above numbers will be revised in the final rule to the extent required to reflect the updated MedPAR file, which will contain data from additional bills received for discharges through March 31, 1997.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1997 case-mix index value in Table 3C in section IV. of the Addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards. The proposed regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1996 (that is, October 1, 1995 through September 30, 1996). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1998, the number of discharges a hospital must have for its cost reporting period that began during FY 1997 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the table below.

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6658
2. Middle Atlantic (PA, NJ, NY)	8477
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7505
4. East North Central (IL, IN, MI, OH, WI)	7273
5. East South Central (AL, KY, MS, TN)	6852
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5346
7. West South Central (AR, LA, OK, TX)	5179
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7926
9. Pacific (AK, CA, HI, OR, WA)	5945

We note that the number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criteria for all hospitals. These numbers will be revised in the final rule based on the latest FY 1996 cost report data.

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1998, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1996 would have to be at least 3,000.

C. Payments to Disproportionate Share Hospitals: Conforming Change Regarding Interpretation of Medicaid Patient Days Included in Disproportionate Patient Percentage (§ 412.106)

Effective for discharges beginning on or after May 1, 1986, hospitals that treat a disproportionately large number of low-income patients receive additional payments through the disproportionate share (DSH) adjustment. One means of determining a hospital's DSH payment adjustment for a cost reporting period requires calculation of its disproportionate patient percentage for the period. The disproportionate patient percentage is the sum of a prescribed Medicare fraction and a Medicaid fraction for the hospital's fiscal period. Under clause (I) of section 1886(d)(5)(F)(vi) of the Act and § 412.106(b)(2), the Medicare fraction is determined by dividing the number of the hospital's patient days for patients who were entitled (for such days) to benefits under both Medicare Part A and Supplemental Security Income (SSI) under Title XVI of the Act, by the total number of the hospital's patient days for the patients who were entitled to Medicare Part A. The Medicaid fraction is determined, in accordance with clause (II) of section 1886(d)(5)(F)(vi) of the Act and § 412.106(b)(4), by dividing the number of the hospital's patient days for patients who (for such days) were eligible for medical assistance under a State Medicaid plan approved under Title XIX of the Act but who were not entitled to Medicare Part A, by the total number of the hospital's patient days for that period.

Initially, HCFA calculated the Medicaid fraction by interpreting section 1886(d)(5)(F)(vi)(II) of the Act to recognize as Medicaid patient days only those days for which the hospital received Medicaid payment for inpatient hospital services. See 51 FR 31454, 31460 (1986). The agency's interpretation was declared invalid by four Federal circuit courts of appeals. See *Cabell Huntington Hosp., Inc.* v. *Shalala*, 101 F.3d 984, 990–91 (4th Cir. 1996) (following three other circuits). These courts held that the statute requires, for purposes of calculating the Medicaid fraction, inclusion of each patient day of service for which a patient was eligible on that day for medical assistance under an approved State Medicaid plan. Specifically, the statute requires inclusion of each hospital patient day for a patient eligible for Medicaid on such day, regardless of whether particular items or services were covered or paid under the State Medicaid plan.

On February 27, 1997, the HCFA Administrator issued HCFA Ruling 97–2, which acquiesced in the four adverse appellate court decisions. The Ruling changed the agency's statutory construction to comport with those decisions, in order to facilitate nationwide uniformity in the calculation of the Medicaid fraction. Like the court decisions, the Ruling provides that a hospital's Medicaid patient days include each patient day of service for which a patient was eligible on such day for medical assistance under an approved State Medicaid plan, regardless of whether particular items or services were covered or paid under the State plan. The Ruling also reflects the hospital's burden of furnishing data adequate to prove each claimed Medicaid patient day, and of verifying with the State that a patient was eligible for Medicaid during each day of the inpatient hospital stay.

The Ruling further provides that the agency's new interpretation is effective February 27, 1997 for each cost reporting period that: (1) Begins on or after that effective date; (2) was not settled, as of that date, on the Medicaid patient days issue, by means of an applicable notice of program reimbursement (NPR) (see § 405.1803); or (3) was settled through such an NPR

as of the Ruling's effective date and is the subject of a pending administrative appeal or civil action that satisfies all applicable jurisdictional requirements of the Medicare statute and regulations. The Ruling also provides, however, that the change in statutory interpretation effected by the Ruling is not a basis for reopening a hospital cost reporting period (see §§ 405.1885–405.1889) that was finalized previously on the same matter at issue.

We propose to revise § 412.106(b)(4) in order to conform the Medicare regulations to the new statutory construction issued in HCFA Ruling 97–2. The revisions are necessary to ensure that the regulations comport with the four appellate court decisions that declared invalid the agency's prior interpretation and led to the issuance of the HCFA Ruling. The proposed revisions will further facilitate nationwide uniformity in the calculation of the Medicaid fraction.

Since the proposed revisions are intended simply to conform the regulations to HCFA Ruling 97–2 (and hence to the four adverse court decisions), revised § 412.106(b)(4) would reiterate the Ruling's change of interpretation that the Medicaid fraction under section 1886(d)(5)(F)(vi)(II) of the Act includes each hospital patient day for a patient eligible for Medicaid on such day, regardless of whether particular items or services were covered or paid under the State Medicaid Plan. Our proposed revisions to § 412.106(b)(4), like the Ruling, would continue to place on the hospital the burdens of production, proof, and verification as to each claimed Medicaid patient day.

Under our proposal, revised § 412.106(b)(4) would apply to cost reporting periods beginning on or after October 1, 1998. HCFA Ruling 97–2, which includes the same provisions as proposed § 412.106(b)(4), would continue to apply to any cost reporting period beginning before October 1, 1998 provided that, as of February 27, 1997, there is for such period: no submitted cost report; no cost report settled on the Medicaid patient days issue through an applicable NPR; or a cost report settled on that issue, which is also the subject of a jurisdictionally proper administrative appeal or civil action on the issue.

D. Payment for Bad Debts (§ 413.80)

Section 4451 of the Balanced Budget Act of 1997 reduces the payment for enrollee bad debt for hospitals. Specifically, this provision reduces the amount of bad debts otherwise treated as allowable costs, attributable to the deductibles and coinsurance amounts under this title, by 25 percent for cost reporting periods beginning during fiscal year 1998, by 40 percent for cost reporting periods beginning during fiscal year 1999, and by 45 percent for cost reporting periods beginning during a subsequent fiscal year. This proposed rule would conform the regulations to the statute.

Section 4451 of the Balanced Budget Act of 1997 also provides that in determining such reasonable costs for hospitals, any copayments reduced under the election available for hospital outpatient services under section 1833(t)(5)(B) of the Act will not be treated as a bad debt. This provision will be implemented in the outpatient prospective payment system regulation that implements section 4521, 4522, and 4523 of the Balanced Budget Act of 1997, to be published later this year.

E. Payment for Direct Costs of Graduate Medical Education to Hospitals and Nonhospital Providers (§§ 405.2468, 413.85, and 413.86)

1. Introduction

Currently, under section 1886(h) of the Act, Medicare pays only hospitals for the costs of graduate medical education (GME) training. We do not pay nonhospital sites for the costs they incur in training medical residents. There has been a general trend to shift patient care from the inpatient setting to the less expensive nonhospital setting where appropriate. Consistent with this trend in patient care, the BBA allows for direct GME payment to qualified nonhospital providers to encourage more training of future physicians in nonhospital settings.

Under section 1886(k) of the Act, as added by section 4625 of the BBA, the Secretary is now authorized, but not required, to pay qualified nonhospital providers for the direct costs of GME training. The Conference Report also notes that the Conferees believe paying nonhospital providers for GME costs may help alleviate physician shortages in underserved rural areas. We believe that providing Medicare payment directly to nonhospital providers may facilitate more training and better quality training in nonhospital sites.

2. Statutory Background

Section 1886(k) of the Act states: ''For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to qualified nonhospital providers for their direct costs of medical education, if those costs are incurred in the operation of an approved medical residency training programs described in subsection (h).'' The statute further provides that, to the extent the Secretary exercises this broad discretionary authority, the rules ''shall specify the amounts, form, and manner in which such payments will be made and the portion of such payments that will be made from each of the trust funds under this title.''

a. Payments Only to ''Qualified Nonhospital Providers''. The statute confers broad discretion on the Secretary regarding whether and how to pay nonhospital providers for direct GME costs. However, the statute does specify the entities whom the Secretary can pay—''qualified nonhospital providers.'' Section 1886(k)(2) of the Act defines ''qualified nonhospital providers'' to include: Federally Qualified Health Centers (FQHCs), as defined in section 1861(aa)(4); Rural Health Centers (RHCs), as defined in section 1861(aa)(2); Medicare+Choice organizations; and such other providers (other than hospitals) as the Secretary determines to be appropriate.

b. Payments Only for the ''Direct Costs'' of Training. The statute also specifies the costs the Secretary can pay for under section 1886(k) of the Act. Medicare pays hospitals for both the direct and indirect costs of medical education under sections 1886(h) and 1886(d)(5)(B) of the Act respectively, but section 1886(k) of the Act provides for payment to nonhospital providers only for the direct costs of medical education.

In addition, section 1886(k) of the Act provides for payment for the direct costs of training medical residents only if those costs are incurred in the operation of an ''approved medical residency training program.'' Section 1886(h)(5)(A) of the Act defines an ''approved medical residency training program'' as a ''residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.'' Implementing regulations at § 413.86(b) state that an approved medical residency training program includes allopathic and osteopathic training programs as well as training programs for dentistry and podiatry. Therefore, the statute authorizes Medicare payments to nonhospital providers only for the costs of training medical residents, not for the costs of training other health professionals.

In addition to adding section 1886(k) of the Act, section 4625 of the BBA amends section 1886(h)(3)(B) of the Act to prohibit double payments for direct

GME to a hospital and a qualified nonhospital provider. This prohibition on double payments requires that the Secretary reduce a hospital's GME payments (the ''aggregate approved amount'' as defined in section 1886(h)(3)(b) of the Act) to the extent we pay a nonhospital provider for GME under section 1886(k) of the Act.

3. Proposed Policies

Pursuant to section 4625 of the BBA, we are proposing policies to provide Medicare payment to nonhospital providers for the direct costs of GME training, effective for portions of cost reporting periods occurring on or after January 1, 1999. We believe that these payments will serve the Congressional intent to encourage and support training in nonhospital settings.

a. Definition of ''Qualified Non-Hospital Providers''. Under our proposed policy, Medicare would make GME payments to the following ''qualified nonhospital providers''—FQHCs, RHCs, and Medicare+Choice organizations. Under the authority of section 1886(k)(2)(D) of the Act, the Secretary may expand the definition of a ''qualified nonhospital provider'' to include such other providers (other than hospitals) as the Secretary determines to be appropriate. Once we have gained experience providing direct GME payments to FQHCs, RHCs, and Medicare+Choice organizations, we may consider including other types of nonhospital providers in the definition of a ''qualified nonhospital provider.''

Additionally, we propose that, under certain circumstances, a hospital may continue to receive GME payments for residents who train in the nonhospital setting. In those instances where a hospital is eligible to continue receiving GME payments for residents who train in the nonhospital setting, the nonhospital provider could receive payment from the hospital for costs they incur in training medical residents. Thus, our policy promotes the intent of section 4625 of the BBA to provide financial support, either directly from Medicare or through the hospital, to nonhospital providers for the direct costs of training residents in the nonhospital site.

b. Definition of ''Direct Costs'' of Medical Education for Non-Hospital Providers. Section 4625 of the BBA provides for payment to nonhospital providers only for the direct costs of training residents. Our proposed definition of ''direct costs'' for nonhospital providers is comparable to the direct costs for hospitals under section 1886(h) of the Act. Under our proposed policy, direct GME costs are those costs that are incurred by the nonhospital site for the education activities of the approved program and that are the proximate result of training medical residents in the nonhospital site. Direct costs for nonhospital providers would include:

- Residents' salaries and fringe benefits (including related travel and lodging expenses where applicable);
- That portion of costs of the teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and
- Other related GME overhead costs.

Consistent with our policies on direct GME costs for hospitals, direct GME costs for nonhospital providers would not include normal operating costs or the marginal increase in costs that the nonhospital site experiences as a result of having an approved medical residency training program. For example, a decrease in productivity and increased intensity in treatment patterns as the result of a training program do not constitute ''direct costs'' of training residents in the nonhospital setting; rather, these are the ''indirect costs'' of such training.

Also consistent with our policies for direct GME payments to hospitals, we propose to pay qualified nonhospital providers only for training that is related to the delivery of patient care services. Sections 1886(h) (''Payments for Direct GME Costs'') and 1886(h)(4)(E) of the Act (''Counting Time Spent in Outpatient Settings'') provide support continuing our longstanding policy of paying only for training that is associated with patient care services. In particular, section 1886(h)(4)(E) of the Act states:

> Such rules shall provide that *only time spent in activities relating to patient care* shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

In addition, section 1861(b) of the Act describes the types of patient care services that are reimbursable. Specifically, section 1861(b)(6) of the Act indicates that the training of interns or residents under an approved teaching program are included as reimbursable patient care costs.

Moreover, direct GME costs for nonhospital providers, like direct GME costs for hospitals, would include only that portion of costs of the teaching physicians' salaries and fringe benefits associated with time spent in teaching and supervising residents. Specifically, a teaching physician's time spent on teaching of a general nature would constitute a direct GME cost, while teaching of a patient-specific nature would not constitute a direct cost. In addition, direct costs in the nonhospital setting would include that portion of teaching physicians' salaries and fringe benefits associated with time spent developing resident schedules and evaluating or rating the residents. Direct costs would also include a teaching physician's office costs allocated to GME.

By contrast, direct GME costs for nonhospital providers would not include the following: A teaching physician's time spent in the care of individual patients which results in billable services; teaching physicians' activities that are related to the education of other health professionals (i.e., classroom instruction in connection with approved activities other than GME such as provider-operated nursing programs); teaching physicians' time spent on administrative and supervisory services to the provider that are unrelated to approved educational activities (i.e. operating costs); and teaching physician activities that involve nonallowable costs such as research and medical school activities that are not related to patient care in the nonhospital setting.

GME overhead costs include only those costs that are allocable to direct GME and that are not used in patient care. For example, a portion of administrative and general costs could be appropriately allocated to an RHC or FQHC's GME cost center. Similarly, a conference room that is dedicated specifically for the training of residents could be appropriately allocated to an RHC or FQHC's GME cost center. By contrast, patient care rooms added to an RHC or an FQHC cannot be appropriately allocated to an RHC or FQHC's GME cost center.

One of the advantages of our proposed definition of ''direct costs'' is that it is administratively feasible. Our definition of ''direct costs'' for nonhospital providers is comparable to the direct costs that are included in the per resident amount paid to hospitals under section 1886(h) of the Act. At present, there is limited information regarding the actual costs of training residents in nonhospital sites. After we gain experience providing direct GME payments to qualified nonhospital providers and have reviewed the GME costs separately reported by these nonhospital providers, we may revise the definition of ''direct costs.'' We are

soliciting comments on other elements that may constitute direct costs of GME in the nonhospital site that can be identified, reported, and verified as directly attributable to GME activities through the cost reporting process. We are interested in comments on whether we should include other costs in the definition of ''direct costs'' for nonhospital providers and on the administrative feasibility of identifying the GME portion of those costs.

c. Determining Direct Costs. One of our major concerns in developing policies for paying nonhospital providers for the direct costs of GME is the administrative feasibility of determining the amount of direct costs incurred by the nonhospital provider. It is our understanding that, currently, hospitals and nonhospital sites often share, to varying degrees, the costs of training residents in the nonhospital site. Because of the difficulty in apportioning costs between the hospital and the nonhospital for the training in the nonhospital site, we believe that it is not administratively feasible to pay both the hospital and the nonhospital site for the cost of training in the nonhospital site. We have been unable to devise a method for accurately apportioning costs between the two entities.

Furthermore, the potential for both the hospital and the nonhospital site to be paid for the same direct GME expenses poses a significant problem for complying with section 1886(h)(3)(B) of the Act, as amended by the BBA, which specifically prohibits double payments. Under this provision, the Secretary shall reduce the hospital's GME payment (the ''aggregate approved amount'') to the extent we pay nonhospital providers for GME costs under section 1886(k) of the Act. Consequently, our policy must ensure that Medicare does not pay two entities for the same training time in the nonhospital site.

Given that the hospital's per resident amount can include, but is not necessarily based on the costs of training in the nonhospital site, we were not able to devise an equitable way of reducing the hospital's per resident payment to reflect payments made under section 1886(k) of the Act. It would not be equitable to subtract the exact amount of payment made to the qualified nonhospital provider from the hospital's per resident payment because the payment made to the nonhospital site is unrelated to the hospital's per resident amount. The hospital per resident amount is based on specific GME costs incurred by the hospital in the 1984 base year. Those costs included in the per resident amount have no relevance to the costs incurred in the nonhospital setting almost 15 years after the 1984 base year. We believe that the residents' salaries, teaching physicians' salaries, and overhead costs for the nonhospital setting will constitute a different proportion of the total GME costs in the nonhospital setting as compared with the hospital setting. Rather, it would be more equitable to determine the proportion of costs incurred by each entity and reduce the hospital's per resident payment by the proportion of GME costs incurred by the nonhospital site; however, since specific components of the per resident amount were not identified in the hospital's GME base year (1984), we cannot accurately determine the appropriate amount to reduce the current year hospital per resident payment amount. Moreover, to reduce the hospital's GME payments based solely on the amount paid to the nonhospital site could result in inequitable payments to the hospital, which has ongoing costs even when the resident is training in the nonhospital site. In fact, it could leave the hospital at risk of receiving no payment for the GME costs it has incurred.

In order to encourage training in nonhospital sites, it is important to develop a policy that, while providing payment to nonhospital providers, would also be equitable to hospitals. We believe that paying only the nonhospital site for the training costs could result in hospitals choosing not to rotate their residents to the nonhospital site. We have been unable to devise an equitable and accurate method for dividing up the GME payment for training in the nonhospital site if neither the hospital, nor the nonhospital site incurs ''all or substantially all'' of the costs. As such, we are soliciting comment on possible methods for allocating the GME payments for training in the nonhospital site where neither the hospital nor the nonhospital provider is incurring ''all or substantially all'' of the costs for the training program. We believe that the proposed policies discussed below are equitable to both hospital and nonhospital providers and will achieve Congress' objective of encouraging and supporting training in the nonhospital setting.

Given our concerns about administrative feasibility, the statutory prohibition on double payments, and developing policies that are equitable to hospitals as well as nonhospital providers, we believe the only feasible way to pay for training in nonhospital settings is to pay either the hospital or the nonhospital provider. Currently, hospitals may receive payment for the time residents spend in the nonhospital setting if the hospital incurs ''all or substantially all'' of the training costs. We propose to adopt a similar policy for nonhospital providers; that is, a qualified nonhospital provider may receive payment for the direct costs of GME if the nonhospital provider incurs ''all or substantially all'' of the training costs.

d. Modifications of Policy To Pay Hospitals For GME. In the course of developing our policies for nonhospital providers, we have reviewed our method for paying hospitals for the costs of training residents in the nonhospital site. Accordingly, as part of our policy to pay nonhospital providers for the costs of training residents, we are proposing necessary and appropriate modifications to our current policy for paying hospitals for such nonhospital training. Specifically, as part of our proposal to implement section 1886(k) of the Act, we propose to modify the regulations at § 413.86(f).

Presently, under sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act, if a hospital incurs ''all or substantially all'' of the costs of training residents in the nonhospital site, then the hospital may include the resident in its indirect medical education (IME) and direct GME full-time equivalent count. Under § 413.86(f)(1)(iii), currently a hospital incurs ''all or substantially all'' of the costs of training the resident in the nonhospital site if the hospital pays the residents' salaries and fringe benefits. Based on our review of data in Medicare cost reports on the Hospital Cost Reporting Information System (HCRIS), we decided to reexamine the issue of what constitutes ''all or substantially all'' of the costs of training the resident. In our analysis, we determined that, on average, residents' salaries and fringe benefits are less than half of the total amount of the direct costs of a hospital's GME program. Therefore, we are proposing to revise the standard for incurring ''all or substantially all'' of the costs for the training program in the nonhospital setting.

We propose to redefine ''all or substantially all'' of the costs for the training program in the nonhospital setting to include at a minimum:

- the portion of costs of the teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and
- residents' salaries and fringe benefits (including travel and lodging expenses where applicable).

e. Payment Proposal. In light of the numerous considerations discussed

above, we are proposing a system whereby we will pay either the hospital or the nonhospital site for the cost of training in the nonhospital site, depending on which entity incurs ''all or substantially all'' of the costs of training in the nonhospital site. An entity incurs ''all or substantially all'' of the costs for the training program in the nonhospital setting if it pays for, at a minimum: that portion of the costs of the teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and residents' salaries and fringe benefits (including travel and lodging expenses where applicable). Our proposal accommodates three alternative payment scenarios that are discussed below.

i. Payment to FQHCs and RHCs. In the first payment scenario, if the FQHC or RHC incurs ''all or substantially all'' of the costs for the training program in the nonhospital setting, we are proposing to pay the nonhospital site cost-based reimbursement for the direct costs of training. By reporting these direct GME costs in a reimbursable cost center on the cost report, an FQHC or RHC would be attesting that it is incurring ''all or substantially all'' of the costs for the training program in the nonhospital site. Conversely, where an FQHC or RHC is not incurring ''all or substantially all'' of the costs of training residents in the nonhospital site, the FQHC or RHC would report these training costs in a nonreimbursable cost center on the cost report.

As previously stated, we propose to define the direct costs of training to include:

- Residents' salaries and fringe benefits (including related travel and lodging expenses where applicable);
- That portion of the costs of teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and
- Other related overhead costs that are allocated to GME.

We are proposing that the FQHC's and RHC's allowable direct GME costs be subject to reasonable cost principles in 42 CFR part 413 and other relevant provisions referenced in part 413. As such we are proposing to add language to § 415.60 to make the reasonable cost principles applicable to FQHC's and RHC's. In addition, the FQHC's and RHC's direct GME costs would be subject to the Reasonable Compensation Equivalency limits under §§ 415.60 and 415.70. Accordingly, we are proposing to add language to § 415.70 to make the reasonable compensation equivalency limits applicable to FQHC's and RHC's.

Also, Medicare would pay only for Medicare's share of the direct costs of training in the nonhospital site. We are proposing that the FQHC's and RHC's Medicare share equal the nonhospital provider's ratio of Medicare visits to total visits. Thus, the amount of Medicare payment would equal the product of the clinic's Medicare allowed direct GME costs and the clinic's ratio of Medicare visits to total visits.

For FQHCs and RHCs that incur ''all or substantially all'' of the costs for the training program in the nonhospital setting, the direct GME costs are not subject to the existing per visit payment caps for reimbursement under sections 505.1 and 505.2 of the Medicare Rural Health Clinic and Federally Qualified Health Centers Manual. Moreover, we believe participation in GME training should not affect any FQHCs or RHCs ability to meet the productivity standards outlined in section 503 of the Medicare Rural Health Clinic and Federally Qualified Health Centers Manual. Therefore, we are proposing that, where payment is available under section 1886(k) of the Act for residents working in either an FQHC or an RHC, the FQHCs and RHCs do not need to include residents as health care staff in the calculation of productivity standards under section 503 of the Manual.

ii. Payment to Medicare+Choice organizations. In the second payment scenario, if a Medicare+Choice organization incurs ''all or substantially all'' of the costs for the training program in the nonhospital setting, we propose making the direct GME payment to the Medicare+Choice organization. The Medicare+Choice organization would be eligible to receive cost-based reimbursement for the residents' salaries and fringe benefits only for the time that the resident spends in the nonhospital setting. In addition, we are proposing that the Medicare+Choice organization's allowed costs include only that portion of the teaching physician salaries and fringe benefits that is related to training in the nonhospital setting.

Unlike our proposed policy in paying FQHCs and RHCs for GME, at this time we are not proposing to pay Medicare+Choice organizations for the costs of overhead that are directly associated with a GME program. We have no historical data on the GME costs of managed care organizations and the extent to which these costs are incurred directly or indirectly under contracts between the managed care organization and physician groups or other providers engaged in ambulatory care. Moreover, we have an established methodology for allocating and reporting overhead costs for FQHCs and RHCs on Medicare cost reports that does not currently exist for Medicare+Choice organizations. Since Medicare+Choice organizations do not use the Medicare cost report, there is currently no mechanism to review and audit these costs in the managed care context. Because Medicare+Choice organizations are paid on a capitated basis, we have no method for paying Medicare+Choice organizations for variable costs such as GME overhead that require a sophisticated cost allocation methodology. By contrast, it is currently feasible to pay Medicare+Choice organizations for the costs of the residents' salaries and teaching physicians' salaries because those costs are more readily documented and auditable.

However, we are open to suggestions about how we can create a methodology for allocating and reporting overhead costs for Medicare+Choice organizations. Any comments should include not only a proposed methodology for paying Medicare+Choice organizations for GME overhead costs, but also proposed mechanisms for the audit and review of the costs of these organizations.

Similar to our proposed policy for paying FQHCs and RHCs for direct costs of GME, the Medicare+Choice organization's reimbursement for residents' salaries and fringe benefits (including related travel and lodging expenses where applicable) would be subject to the reasonable cost principles in 42 CFR part 413 and any other relevant provisions referenced in part 413. As such we are proposing to add language to § 415.60 to make the reasonable cost principles applicable to Medicare+Choice organizations. In addition, the Medicare+Choice organization's GME reimbursement would also be subject to the Reasonable Compensation Equivalency limits under §§ 415.60 and 415.70. Accordingly, we are proposing to add language to § 415.70 to make reasonable compensation equivalency limits applicable to Medicare+Choice organizations. While we would pay the Medicare+Choice organization for certain GME costs in nonhospital settings under this proposal, the cost of residents' and teaching physicians' salaries and fringe benefits in the hospital setting would be paid to the hospital, not the Medicare+Choice organization.

The Medicare+Choice organization would receive direct GME payment only for the direct costs of training in the nonhospital site that are associated with the delivery of patient care services. In

determining the amount of direct GME payments to Medicare+Choice organizations, we must adjust for Medicare's share of those education costs. Medicare's share would equal the ratio of the total number of Medicare enrollees in the Medicare+Choice organization to total enrollees in the Medicare+Choice organization.

We are proposing that, in order to receive the direct GME payment, the Medicare+Choice organization must produce a contractual agreement between itself and the nonhospital providers. Medicare+Choice organizations may contract with any nonhospital patient care site, including freestanding clinics, nursing homes, and physicians' offices in connection with approved programs. The contract between the Medicare+Choice organization and the nonhospital site must indicate that, for the time that residents spend in the nonhospital site, the Medicare+Choice organization agrees to pay for the cost of residents' salaries and fringe benefits. In addition, the contract must indicate that the Medicare+Choice organization agrees to pay the portion of the costs of teaching physicians' salaries and fringe benefits that is related to the time spent in teaching and supervision of residents and that is unrelated to the volume of services. The contract must stipulate the portion of each teaching physician's time that will be spent training residents in the nonhospital setting. Moreover, the contract must indicate that the Medicare+Choice organization agrees to identify an amount for the cost of the teaching physician's salary based on the time that the resident spends in the nonhospital setting, not based upon a capitated rate for the delivery of physician services.

Under our proposed rule, we could pay a Medicare+Choice organization for the direct costs of training medical residents in a physician's office if such office had a contractual agreement with the organization whereby the organization agrees to pay for ''all or substantially all'' of the costs for the training program in the nonhospital setting. However, an independent physician office would not be eligible to receive payment directly from Medicare for the cost of training residents because it would not be a ''qualified nonhospital provider'' under our proposed policy. Similarly, if a hospital rotates a resident through a physician's office, the hospital must pay for ''all or substantially all'' of the costs of training the resident in the physician's office in order to include that resident in its FTE count for IME and direct GME purposes. (In this instance, the hospital's responsibility in assuming ''all or substantially all'' of the costs of training the resident in the nonhospital site would not be based on section 4625 of BBA which permits payment to nonhospital providers.) The hospital would have to assume ''all or substantially all'' of the training costs for that nonhospital training time in order to avail itself of the benefit of including the resident in the hospital's FTE count for IME and direct GME purposes based on the proposed modifications to § 413.86.

iii. Payment to Hospitals. In the third payment scenario, if the hospital itself incurs ''all or substantially all'' of the costs for the training program in the nonhospital setting, then the hospital may include the residents' training time in the nonhospital setting in the hospital's FTE counts for direct GME and for IME. In order to include the residents' training in the nonhospital site, the hospital must produce a contractual agreement between the hospital and the nonhospital provider. Under § 413.86(f)(1)(iii), hospitals may contract with any nonhospital patient care provider such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs.

Currently, a hospital must produce a written agreement between the hospital and the nonhospital provider that states that the resident's compensation for training time spent outside of the hospital setting is to be paid by the hospital. Since this proposal changes the definition of what constitutes ''all or substantially all'' of the costs of training in the nonhospital site, hospitals must produce a written agreement that demonstrates that they are assuming responsibility for more of the costs of training in the nonhospital site than had previously been required.

In accordance with our proposed definition of what constitutes ''all or substantially all'' of the costs of training while the resident is in the nonhospital site, we are proposing that the contract must indicate that the hospital is assuming financial responsibility for, at a minimum, the cost of residents' salaries and fringe benefits (including travel and lodging expenses where applicable) and the costs for that portion of teaching physicians' salaries and fringe benefits related to the time spent in teaching and supervision of residents.

The contract must indicate that the hospital is assuming financial responsibility for these costs directly or that the hospital agrees to reimburse the nonhospital provider for such costs. The contract must also contain an acknowledgment on the part of the nonhospital provider that, since the residents' time is being counted by the hospital, the nonhospital site cannot claim GME costs on their Medicare cost report. The nonhospital provider must agree to report its direct GME costs as well as any money received from the hospital for GME purposes in a nonallowable cost center on its cost report. In addition, in order to determine teaching physician compensation that may be allocated to direct GME, the nonhospital provider must specify the portion of the teaching physicians' time that will be spent training residents in the nonhospital setting. Finally, any payment to the hospital for the direct costs of GME training in the nonhospital setting will continue to reflect Medicare's share, which equals the hospital's ratio of Medicare inpatient days to total inpatient days.

Hospitals that have residents who rotate to nonhospital sites are, like all teaching hospitals, subject to an institutional cap on the number of FTE residents that may be counted for both indirect and direct GME under sections 1886(d)(5)(B)(v) and 1886(h)(6)(F) of the Act. For hospitals that have residents who rotate to a nonhospital site, those residents will be subject to the hospital's FTE caps.

f. Trust Funds. Under section 1886(k)(1) of the Act, the rules established by the Secretary for paying nonhospital providers for GME must specify the portion of Medicare payments that will be made from each of the Medicare trust funds. We propose that GME payments made directly to an FQHC, RHC, or Medicare+Choice organization would be made from the Federal Supplementary Medical Insurance Trust Fund.

g. Conclusion. Under this proposed rule, clinics that are presently ineligible to receive payments for direct GME may now receive such payments. Moreover, this proposal provides Medicare+Choice organizations the opportunity to receive direct GME payments for training residents in the nonhospital setting. As Medicare+Choice organizations, managed care entities will, for the first time, be eligible to receive direct GME payments for training residents in various types of nonhospital sites. This proposed rule would help bridge the disparity between hospital and nonhospital providers in obtaining payment for direct GME costs.

We believe this proposed rule may encourage the development of new programs in nonhospital settings. Similarly, it may also encourage approved residency training programs to

rotate additional residents to nonhospital sites.

In developing this proposed rule, we considered establishing a fixed payment rate for the direct costs of training residents in the nonhospital setting. We are not proposing a policy of a fixed payment at this time because we presently have no reliable data on the direct costs of training residents in nonhospital settings. Moreover, we are concerned that a fixed payment for these costs may not be appropriate if there is significant variation in cost among participating nonhospital sites.

Given these considerations, our policy to pay FQHCs, RHCs, and Medicare+Choice organizations on a cost reimbursement basis may be revised in the future. Once we have acquired data such that we can estimate the direct costs of training residents in the nonhospital site, we will revisit our payment methodology for paying FQHCs, RHCs, and Medicare+Choice organizations for direct GME. We believe that ultimately it might be appropriate to pay FQHCs, RHCs, and Medicare+Choice organizations using a national average per resident amount. This national per resident amount would be based on the national average for the direct costs of training medical residents in the nonhospital site. As such, we are interested in receiving comments on a fixed payment methodology and on how to derive such a payment. These comments should include empirical data on training costs in nonhospital sites.

The effective date of these provisions for FQHCs, RHCs, Medicare+Choice organizations, and hospitals will be January 1, 1999. In particular, the effective date for IME payments to hospitals under this provision applies to discharges occurring on or after January 1, 1999. In addition, the effective date for direct medical education payments to FQHCs, RHCs, Medicare+Choice organizations, and hospitals applies to that portion of cost reporting periods occurring on or after January 1, 1999.

VI. Changes to the Prospective Payment System for Capital-Related Costs

A. Proposed Cap on the Capital Indirect Medical Education Adjustment Ratio (§ 417.322)

Under section 1886(g) of the Act, the Secretary has broad discretion in implementing the capital prospective payment system. Section 412.322 of the regulations specifies the formula for the capital indirect medical education (IME) adjustment factor. The capital IME adjustment is intended to pay the capital prospective payment system share of the indirect costs of medical education to teaching hospitals. The formula was adopted in the August 30, 1991 final rule for the capital prospective payment system (56 FR 43380) and uses the ratio of interns and residents to average daily census (defined as total inpatient days divided by the number of days in the cost reporting period). Section 1886(d)(5)(B) of the Act requires the use of the ratio of residents-to-beds to calculate the IME adjustment for the operating Prospective payment system. However, pursuant to our authority under section 1886(g) of the Act, we adopted the resident to average daily census ratio for the capital prospective payment system because we believed it was a more appropriate method for measuring teaching intensity and because we believed it was less subject to manipulation.

The IME adjustment factor increases by approximately 2.8 percentage points for each .10 increase in the hospital's ratio of residents to average daily census. The IME adjustment for inpatient capital-related costs for hospitals paid under the prospective payment system takes the form of e raised to the power (.2822 × ratio of interns and residents to average daily census)-1] where e is the natural antilogy of 1, based on the total cost regression results. In order to determine the Federal rate portion of the hospital's payment, the IME adjustment factor is multiplied by the standard federal rate, the DRG weight, the geographic adjustment factor, and any other relevant payment adjustments such as the DSH adjustment or the large urban add-on. The formula is as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable).

It has come to our attention that because of the application of the capital IME adjustment, one hospital would receive a capital IME payment greater than its total hospital costs. We have also recently learned that of the approximately 1,200 teaching hospitals in the United States, based on December 1997 data, 8 hospitals have a resident to average daily census ratio of more than 1.5. A resident to average daily census ratio of 1.5 results in a capital IME adjustment factor of .53, which increases the Federal rate portion of the hospital's capital payment by 53 percent.

To address this unintended effect of the capital IME methodology, we are proposing to cap the capital IME ratio at 1.5. A ratio greater than 1.5 means a hospital has, on average, considerably more residents than inpatients. Capping the ratio at 1.5 would allow for one resident per patient on the inpatient side plus some outpatient training, and would keep capital IME payments more consistent with the costs incurred. Because of the large number of unoccupied beds in most hospitals, the operating IME ratio has only slightly exceeded 1.0 in two cases. This change would ensure that the capital IME adjustment is more in line with hospital costs.

B. Payment Methodology for Mergers Involving New Hospitals (§ 412.331)

The August 30, 1991 final rule (56 FR 43418), which implemented the capital prospective payment system, established special payment provisions for new hospitals. Under § 412.324(b), a new hospital is paid 85 percent of its allowable Medicare capital-related costs through its first cost reporting period ending at least 2 years after the hospital accepts its first patient. The first cost reporting period beginning at least 1 year after the hospital accepts its first patient is the hospital's base year for purposes of determining its hospital-specific rate. Section 412.302(b) defines a new hospital's old capital costs as allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before the last day of the hospital's base year cost reporting period. Beginning with the third year, the hospital is paid under the fully prospective or hold-harmless payment methodology, as appropriate. If the hospital is paid under the hold-harmless payment methodology, the hospital's hold-harmless payments for its old capital costs can continue for up to 8 years.

In the August 30, 1991 final rule, we defined a new hospital as one that had operated (under previous or present ownership) for less than 2 years and did not have a 12-month cost reporting period that ended on or before December 31, 1990. In the September 1, 1992 final rule (57 FR 39789), as a result of situations brought to our attention after publication of the prospective payment system final rule, we clarified the new hospital exemption under the capital prospective payment system. We explained that the new hospital exemption would not apply to a facility that opened as an acute care hospital if that hospital had previously operated under current or prior ownership and had a historic asset base. We also clarified that a hospital that replaced its entire facility (with or without a change of ownership) would not qualify for a

new hospital exemption and that a previously existing excluded hospital (paid under section 1886(b) of the Act) that became an acute care hospital (paid under section 1886(d)) of the Act would not qualify.

We explained our belief that the reasonable cost payment protection under the new hospital exemption should only be available to those hospitals that had not received reasonable cost payments in the past and needed special protection during their initial period of operation. We also stated in the June 4, 1992 proposed rule (57 FR 23649) that we were clarifying the new hospital exemption to ensure that hospitals that had an existing asset base before December 31, 1990 were not provided with an extended transition period and inappropriately higher payments relative to other hospitals. We also explained our belief that it was essential to maintain the integrity of the capital prospective payment system by allowing only truly new providers of hospital care to qualify for the new hospital exemption.

Since publication of our last clarification of the payment rules for new hospitals, questions have arisen regarding application of our rules for payment of new hospitals in merger situations. Consistent with our previously stated policy that only truly new hospitals without an existing asset base should be eligible for the new hospital exemption, we are further clarifying the new hospital payment provisions.

If during the period it is eligible for payment as a new hospital (as defined at § 412.300(b) and § 412.328(b)), a new hospital merges with one or more existing hospitals and the merger meets the existing capital-related reasonable cost rules regarding the criteria for recognizing a merger at § 413.134 and the new hospital is the surviving corporation (as defined in § 413.134(l)(2)) we would treat as old capital only those assets of the existing hospital that met the definition of old capital (as defined in § 412.302(b)) prior to the merger, for purposes of determining payments after the merger.

Any assets of the existing hospital that were considered new capital prior to the merger will still be considered new capital after the merger. The merger cannot be used to convert the existing hospital's new capital into old capital. After the merger, the discharges of each campus of the merged entity would maintain their pre-merger payment methodology until the end of the 2 year period that the ''new hospital'' campus was eligible for reasonable cost reimbursement as defined at § 412.324(b). At the end of this period, the intermediary would devise a hospital specific rate for the ''new'' campus of the merged hospital. Finally, the calculation methodology for hospital mergers at new § 412.331(a)(1) and (2) would be performed and a combined hospital-specific rate would be determined and a payment methodology selected for the merged hospital as a whole.

The calculation at § 412.331(a)(1) and (2) uses each hospital's base year old capital costs. Any new capital of the previously existing hospital would not be used in the determination. If the new merged entity qualifies for the hold-harmless payment methodology, only the capital which meets the definition of old capital at § 412.302(b) would be eligible for hold-harmless payments.

We note that this proposed change is consistent with the principles underlying existing § 412.331(a)(3), which provides that in the case of a merger only the existing capital-related costs related to the assets of each merged or consolidated hospital as of December 31, 1990 are recognized as old capital costs during the transition period. If the hospital is paid under the hold-harmless methodology after merger or consolidation, only that original base year old capital is eligible for hold-harmless payments.

Example: Hospital A is a new hospital in its first 2 years of operation and is being paid 85 percent of its allowable Medicare inpatient hospital capital-related costs. Hospital A's base year for establishing its hospital-specific rate will end September 30, 1998. Hospital B is an existing hospital whose base year for capital prospective payment system purposes was June 30, 1990. Hospital B is a hold-harmless hospital paid 100 percent of the Federal rate. Hospital A merged with Hospital B (in accordance with to § 413.134(l)) on March 1, 1998, and Hospital A is a new merged entity, with two campuses: one which used to be the original Hospital A—the ''new'' hospital, and one which used to be hospital B—the ''existing'' hospital). The merged Hospital A retains the corporate structure, provider number, and cost reporting period of the original Hospital A, which is the surviving hospital. The merged Hospital A's discharges will be paid under two different payment methodologies until the ''new'' campus completes its base period under the payment rules for new hospitals and a hospital-specific rate and a payment methodology can be determined for the merged Hospital A. Until that time, the discharges of the ''new'' hospital campus (previously the original Hospital A) will be paid in accordance with § 412.324(b) as a new hospital. Any capital that meets the definition of old capital acquired by the ''new'' campus before the end of its base year will be accorded old capital status in accordance with § 412.302(b). The ''existing'' hospital campus (previously hospital B) will continue to be paid on a hold-harmless basis. Any capital acquired by the ''existing'' campus will be accorded new capital status in accordance with section 2807.3A of the Provider Reimbursement Manual (PRM). At the end of the ''new'' campus' base year, a hospital-specific rate will be determined for that campus. After a hospital specific rate is determined, the calculation methodology for hospital mergers at § 412.331(a)(1) and (2) will be performed. As part of the calculation and before combining the data, the base years of the two hospitals used to establish the hospital-specific rate are brought to the same point by discharge-weighting and updating. The calculation uses only the old capital costs of each hospital in order to determine a combined hospital-specific rate and payment methodology. After a payment methodology determination is made, the two campuses will be paid using the same payment methodology for all of their discharges.

VII. Changes for Hospitals and Units Excluded From the Prospective Payment System

Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§ 413.40(g))

1. Updated Caps

Section 1886(b)(3) of the Act as amended by section 4414 of the BBA established caps on the target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The caps on the target amounts apply to the following three categories of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

A discussion of how the caps on the target amounts were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018). For purposes of calculating the caps for cost reporting periods beginning during FY 1999 through FY 2002, the statute requires us to calculate the 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996. The resulting amounts are updated by the market basket percentage to the applicable fiscal year.

The projected market basket for excluded hospitals and units for FY 1999 is 2.5 percent. Accordingly, the caps on the target amount for FY 1999 as follows:

(1) Psychiatric hospitals and units: $10,443

(2) Rehabilitation hospitals and units: $18,938

(3) Long-term care hospitals: $37,360

2. Classification of Hospitals and Units

Since publication of the August 29, 1997 final rule with comment period, some excluded facilities have suggested that if they are currently excluded as one class of hospital or unit but also qualify for exclusion as another class of hospital, they should be permitted to choose which classification applies for purposes of applying the cap on target amounts. For example, some hospitals that participate in Medicare as psychiatric hospitals (defined under section 1861(f) of the Act, and the special conditions of participation in 42 CFR part 482 subpart E) have noted that they have average lengths of stay greater than 25 days. Those hospitals have asked to be ''reclassified'' as long-term care hospitals and given the benefit of the higher cap on target amounts applicable to that hospital class.

We have considered these hospitals' suggestions, but we believe it would not be appropriate to adopt them. Section 1886(b)(3)(H)(iv) of Act makes it clear that each category of hospital and corresponding units—psychiatric (section 1886(d)(1)(B)(I)), rehabilitation (section 1886(d)(1)(B)(ii)), and long-term care hospitals (section 1886(d)(1)(B)(iv)) is treated separately. We believe it is consistent with effective implementation of this provision to prevent hospitals or units that could potentially be assigned to more than one category of excluded facility from choosing the category to which they wish to be assigned. Even though some hospitals or units in one group might potentially have been assigned to a different group, each group has its own limit based on the target amounts for similarly classified facilities. It would not be appropriate to apply a limit to a hospital or unit based on the target amount derived from the cost experience of differently classified hospitals and units.

In addition, there are a number of hospitals that could potentially move from the psychiatric hospital cap to the long-term care hospital cap. This movement would have a significant impact on the appropriateness of both caps. In the case of the psychiatric hospitals, had those hospitals with the longest lengths of stay and therefore higher per discharge target amount been excluded in the original calculation of the caps, the cap for all remaining psychiatric hospitals would invariably have been lower. Furthermore, had those psychiatric hospitals been included in the calculation of the long-term care hospital cap, that cap could also have been lower. To allow such a significant change in the application of the caps is to raise a serious question as to the appropriateness of the current caps for all psychiatric and long-term care hospitals.

Thus, to clarify the application of the caps, we propose to revise § 413.40(c)(4)(iii) to specify that, for purposes of that paragraph, the classification of a hospital that was excluded from the prospective payment system for its cost reporting period ending in FY 1996 will be determined by its classification (that is, the basis on which it was excluded) in FY 1996. If a hospital or unit was not excluded for a cost reporting period ending in FY 1996 but could be excluded on more than one basis (for example, as either a rehabilitation or long-term care hospital) it will be assigned to the classification group with the lowest limit.

3. Exceptions

The August 29, 1997 final rule with comment period (62 FR 46018) specified that a hospital that has a target amount that is capped at the 75th percentile would not be granted an adjustment payment to the target amount (also referred to as an exception payment) as governed by § 413.40(g) based solely on a comparison of its costs or patient mix in its base year to its costs or patient mix in the payment year. Since the hospital's target amount would not be determined based on its own experience in a base year, any comparison of costs or patient mix in its base year to costs or patient mix in the payment year would be irrelevant.

We propose to clarify that, to the extent we grant an exception to a hospital not affected by the cap, the amount of the exception would be limited to the cap on the hospital's target amount. This policy is consistent with the caps. By establishing caps on TEFRA target amounts, Congress has limited payments to individual hospitals based on amounts that reflect the cost experience of other hospitals. Therefore, in determining the extent of any adjustment paid to a hospital as an exception under our regulations at § 413.40(g)(3), we believe it is consistent with Congressional intent to limit the extent of the adjustment to the hospital's cap on its target amount.

We propose to revise § 413.40(g)(1) to set forth the limitation on the adjustment payments.

VIII. MedPAC Recommendations

We have reviewed the March 1998 report submitted by MedPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations concerning the update factors for inpatient operating costs and for hospitals and hospital distinct-part units excluded from the prospective payment system are discussed in Appendix D, to this proposed rule. The remaining recommendations are discussed below.

A. Disproportionate Share Hospitals (DSH)

Recommendation: The Medicare Payment Advisory Commission (MedPAC) made several recommendations concerning the Medicare disproportionate share adjustment calculation. In general, the Commission's proposal would base the amount of DSH payment each hospital receives on its volume and mix of cases paid under the prospective payment system and its share of low-income patients. The low-income share measure would reflect the costs of care provided to low-income individuals (Medicare patients eligible for Supplemental Security Income (SSI), Medicaid patients, patients sponsored by local indigent care programs, and patients receiving uncompensated care) as a proportion of total patient care expenses. Both inpatient and outpatient costs were included in the data used to calculate the low-income shares, although payment would be made only on inpatient discharges.

The same formula would be applied to all prospective payment hospitals. Under the recommendation, there would be a threshold or minimum low-income share, that must be reached for a hospital to receive any Medicare disproportionate share adjustment. The payment the hospital would receive is proportionate to the segment of its low-income share that lies above the threshold. MedPAC simulated the potential effects of applying their approach on the distribution of Medicare disproportionate share payments made in 1995. For purposes of MedPAC's simulations, the threshold was set at a level that would limit payments to about 40 percent of prospective payment hospitals—roughly the same as under the current DSH adjustment. MedPAC stated that this proportion could be adjusted, or the threshold could be set using a different method, as deemed appropriate by policy makers. (For more information see Volume 1, chapter 6, page 63 of the March 1998 report.)

Response: Section 1886(d)(5)(F) of the Act, as amended by section 4403(b) of the BBA, requires us to prepare a report to Congress, due by August 5, 1998, which will include our recommendations for an appropriate

formula for determining DSH payments. We appreciate MedPAC's efforts to assist HCFA in restructuring the Medicare disproportionate share adjustment and we will further examine and consider their recommendations as we develop our report to Congress.

B. Potential Effects of Target Amount Caps

Recommendation: The wage-related portion of the excluded hospital target amount caps should be adjusted by the appropriate hospital wage index to account for geographic differences in wages. (For more information see Volume 1, chapter 7, page 71 of the March 1998 report.)

Response: As MedPAC indicated in its recommendation, legislation would be required to adjust the target amount caps in such a substantial manner as to adjust for differences in area labor costs.

IX. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at HTTP://WWW.HCFA.GOV/STATS/PUBFILES.HTML. Data files are listed below with the cost of each. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA–PUF) to cover the cost to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MEDPAR-Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.)

The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**, usually available by the end of May (April beginning in 1998). This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**, usually available by the first week of September (August beginning with the FY 1999 final rule). For final rules published before 1998, this file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file). The FY 1997 MedPar file used for the FY 1999 final rule will have a cutoff of 6 months after the end of the fiscal year (March file).

Media: Tape/Cartridge
File Cost: $3,415.00 per fiscal year
Periods Available: FY 1988 through FY 1997

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually available by the end of May (April beginning in 1998). This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**, usually available by the first week of September (August beginning with the FY 1999 final rule). For final rules published before 1998, this file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file). The FY 1997 MedPar file used for the FY 1999 final rule will be cut off 6 months after the end of the fiscal year (March file).

Media: Tape/Cartridge
File Cost: $1,050.00 per State per year
Periods Available: FY 1988 through FY 1997

3. HCFA Wage Data

This file contains the hospital hours and salaries for 1995 used to create the proposed FY 1999 prospective payment system wage index. The file will be available by the beginning of February for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**, usually by the end of April.
- Final Rule published in the **Federal Register**, usually by the first week of August.

Media: Diskette/Internet
File Cost: $145.00 per year
Periods Available: FY 1999 PPS Update

4. HCFA Hospital Wages Indices (Formally: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/Internet
File Cost: $145.00 per year
Periods Available: FY 1999 PPS Update

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).

Media: Diskette/Internet

File Cost: $145.00 per year
Periods Available: FY 1999 PPS Update

6. Reclassified Hospitals by Provider Only

This file contains a list of hospitals that were reclassified for the purpose of the proposed FY 1999 wage index. Two versions of these files are created each year.

They support the following:

- NPRM published in the **Federal Register**, usually by the end of April.
- Final Rule published in the **Federal Register**, usually by the first week of August.

Media: Diskette/Internet
File Cost: $145.00 per year
Periods Available: FY 1999 PPS Update

7. PPS–IV to PPS–XII Minimum Data Sets

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS IV	10/01/86	10/01/87
PPS V	10/01/87	10/01/88
PPS VI	10/01/88	10/01/89
PPS VII	10/01/89	10/01/90
PPS VIII	10/01/90	10/01/91
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	10/01/94
PPS XII	10/01/94	10/01/95

(**Note:** The PPS XIII Minimum Data Set covering FY 1997 will not be available until July 31, 1998.)

File Cost: $715.00 per year

8. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	10/01/94
PPS XII	10/01/94	10/01/95

(**Note:** The PPS XIII Capital Data Set covering FY 1997 will not be available until July 31, 1998.)

File Cost: $715.00 per year

9. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet
File Cost: $265.00
Periods Available: FY 1998 PPS Update

10. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May (April beginning in 1998).
- Final rule published in the **Federal Register**, usually by the first week of September (August beginning in 1998).

Media: Diskette/Internet
Price: $145.00 per year
Periods Available: FY 1985 through FY 1997 (Internet—FY 1997)

11. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hardcopy image has been copied to diskette. There are two versions of this file as published in the **Federal Register**:

a. NPRM, usually published by the end of May (April beginning in 1998).

b. Final rule, usually published by the first week of September (August beginning in 1999).

Media: Diskette/Internet
File Cost: $145.00
Periods Available: FY 1999 PPS Update

12. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $145.00
Periods Available: FY 1999 PPS Update

13. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are ''Before Outliers Removed'' and the AOR is ''After Outliers Removed.'' (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of April.
- Final rule published in the **Federal Register**, usually by the first week of August.

Media: Diskette/Internet
File Cost: $145.00
Periods Available: FY 1999 PPS Update

For further information concerning these data tapes, contact Mary R. White at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4548.

B. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES**

section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1999 be published by August 1, 1998, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

A. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 is revised to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a), unless otherwise noted.

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

§ 405.2468 [Amended]

2. In § 405.2468, a new paragraph (f) is added to read as follows:

* * * * *

(f) *Graduate medical education.* (1) Effective for that portion of cost reporting periods occurring on or after January 1, 1999, if an RHC or an FQHC incurs ''all or substantially all'' of the costs for the training program in the nonhospital setting as defined in § 413.86(b) of this chapter, the RHC or FQHC may receive direct graduate medical education payment for those residents.

(2) Direct graduate medical education costs are not included as allowable cost under § 405.2466(b)(1)(i); and therefore, are not subject to the limit on the all-inclusive rate for allowable costs.

(3) Allowable graduate medical education costs must be reported on the RHC's or the FQHC's cost report under a separate cost center.

(4) Allowable direct graduate medical education costs under paragraphs (f)(5) and (6)(i) of this section, are subject to reasonable cost principles under part 413 and the reasonable compensation equivalency limits in §§ 415.60 and 415.70 of this chapter.

(5) The allowable direct graduate medical education costs are those costs incurred by the nonhospital site for the educational activities associated with patient care services of an approved program, subject to the redistribution and community support principles in § 413.85(c).

(i) The following costs are included in allowable direct graduate medical education costs to the extent that they are reasonable—

(A) The costs of the residents' salaries and fringe benefits (including travel and lodging expenses where applicable).

(B) The portion of teaching physicians' salaries and fringe benefits that are related to the time spent teaching and supervising residents.

(C) Facility overhead costs that are allocated to direct graduate medical education.

(ii) The following costs are not included as allowable graduate medical education costs—

(A) Costs associated with training, but not related to patient care services.

(B) Normal operating and capital-related costs.

(C) The marginal increase in patient care costs that the RHC or FQHC experiences as a result of having an approved program.

(D) The costs associated with activities described in § 413.85(d) of this chapter.

(6) Payment is equal to the product of—

(i) The RHC's or the FQHC's allowable direct graduate medical education costs; and

(ii) Medicare's share of the direct graduate medical education payment which is equal to the ratio of Medicare visits to the total number of visits (as defined in § 405.2463).

(7) Direct graduate medical education payments to RHCs and FQHCs made under this section are made from the Federal Supplementary Medical Insurance Trust Fund.

* * * * *

B. Part 412 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 1895hh).

Subpart A—General Provisions

2. Section 412.4 is revised to read as follows:

§ 412.4 Discharges and transfers.

(a) *Discharges.* Subject to the provisions of paragraphs (b) and (c) of this section, a hospital inpatient is considered discharged from a hospital paid under the prospective payment system when —

(1) The patient is formally released from the hospital; or

(2) The patient dies in the hospital.

(b) *Transfer—Basic rule.* A discharge of a hospital inpatient is considered to be a transfer for purposes of payment under this part if the discharge is made under any of the following circumstances:

(1) From a hospital to the care of another hospital that is—

(i) Paid under the prospective payment system; or

(ii) Excluded from being paid under the prospective payment system because of participation in an approved Statewide cost control program as described in subpart C of part 403 of this chapter.

(2) From one inpatient area or unit of a hospital to another inpatient area or unit of the hospital that is paid under the prospective payment system.

(c) *Transfers—Special 10 DRG rule.* For discharges occurring on or after October 1, 1998, a discharge of a hospital inpatient is considered to be a transfer for purposes of this part when the patient's discharge is assigned, as described in § 412.60(c), to one of the qualifying diagnosis-related groups (DRGs) listed in paragraph (d) of this section and the discharge is made under any of the following circumstances—

(1) To a hospital or distinct part hospital unit excluded from the prospective payment system under subpart B of this part.

(2) To a skilled nursing facility or to a swing bed in the hospital that meets the provisions of § 482.66 of this chapter.

(3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within 3 days after the date of discharge.

(d) *Qualifying DRGs.* The qualifying DRGs for purposes of paragraph (c) of this section are DRGs 14, 113, 209, 210, 211, 236, 263, 264, 429, and 483.

(e) *Payment for discharges.* The hospital discharging an inpatient (under paragraph (a) of this section) is paid in full, in accordance with § 412.2(b).

(f) *Payment for transfers*—(1) *General rule.* Except as provided in paragraph (f)(2) or (f)(3) of this section, a hospital that transfers an inpatient under the circumstances described in paragraph (b) or (c) of this section, is paid a graduated per diem rate for each day of the patient's stay in that hospital, not to exceed the amount that would have been paid under subparts D and M of this part if the patient had been discharged to another setting. The per diem rate is determined by dividing the appropriate prospective payment rates (as determined under subparts D, and M of this part) by the geometric mean length of stay for the specific which the case is assigned. Payment is graduated by paying twice the per diem amount for the first day of the stay, and the per diem amount for each subsequent day, up to the full DRG payment.

(2) *Special rule for DRGs 209, 210, and 211.* A hospital that transfers an inpatient under the circumstances described in paragraph (c) of this section and the transfer is assigned to DRGs 209, 210 or 211 is paid as follows:

(i) 50 percent of the appropriate prospective payment rate (as determined under subparts D and M of this part) for the first day of the stay; and

(ii) 50 percent of the per diem amount as calculated under paragraph (f)(1) of this section for the remaining days of the stay, up to the full DRG payment.

(3) *Transfer assigned to DRG 385.* If a transfer is classified into DRG No. 385 (Neonates, died or transferred) the transferring hospital is paid in accordance with § 412.2(e).

(4) *Outliers.* Effective with discharges occurring on or after October 1, 1994, a transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost outliers as described in subpart F of this part.

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. In § 412.106, paragraph (b)(4) is revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(b) * * *

(4) *Second computation.* The fiscal intermediary determines, for the same cost reporting period used for the first computation, the number of the hospital's patient days of service for which patients were eligible for Medicaid but not entitled to Medicare Part A, and divides that number by the total number of patient days in the same period.

(i) For purpose of paragraph (b)(4), a patient is deemed eligible for Medicaid on a given day if the patient is eligible for medical assistance under an approved State Medicaid plan on such day, regardless of whether particular items or services were covered or paid under the State plan.

(ii) The hospital has the burden of furnishing data adequate to prove eligibility for each Medicaid patient day claimed under this paragraph, and of verifying with the State that a patient was eligible for Medicaid during each claimed patient hospital day.

* * * * *

Subpart M—Prospective Payment System for inpatient Hospital Capital Costs

4. In § 412.322, a new sentence is added at the end of paragraph (a)(3) to read as follows:

§ 412.322 Indirect medical education adjustment factor.

(a) * * *

(3) * * * This ratio cannot exceed 1.5.

* * * * *

5. In § 412.331, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c) respectively, a new paragraph (a) is added, and the first sentences of new paragraphs (b) introductory text and (b)(2) are revised to read as follows:

§ 412.331 Determining hospital-specific rates in cases of hospital merger, consolidation, or dissolution.

(a) *New hospital merger or consolidation.* If, after a new hospital accepts its first patient but before the end of its base year, it merges with one or more existing hospitals, and two or more separately located hospital campuses are maintained, hospital specific rate and payment determination for the merged entity are determined as follows—

(1) The ''new'' campus continues to be paid based on reasonable costs until the end of its base year. The existing campus remains on its previous payment methodology until the end of the new campus' base year. Effective with the first cost reporting period beginning after the ''new'' campus, the intermediary determines a hospital-specific rate applicable to the new campus, and then determines a revised hospital-specific rate for the merged entity in accordance with paragraph(a) of this section.

(2) *Payment determination.* To determine the applicable payment methodology under § 412.336 and for payment purposes under § 412.340 or § 412.344, the discharge-weighted hospital-specific rate is compared to the Federal rate. The revised payment methodology is effective on the first day of the cost reporting period beginning after the end of the ''new'' campus'' base year.

(b) *Hospital merger or consolidation.* If, after the base year, two or more hospitals merge or consolidate into one hospital as provided for under § 413.134(k) of this chapter and are not subject to the provisions of paragraph (a) of this section, the intermediary determines a revised hospital-specific rate applicable to the combined facility under § 412.328, which is effective beginning with the date of merger or consolidation. * * *

(2) *Payment determination.* To determine the applicable payment methodology under § 412.336 and for payment purposes under § 412.340 or § 412.344, the discharge-weighted hospital-specific rate is compared to the Federal rate. * * *

* * * * *

C. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (I) and (n), 1861(v), 1871, 1881, 1883, and 1866 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (I) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (c)(4)(iv) is redesignated as paragraph (v), a new paragraph (iv) is added, and paragraph (g)(1) is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(c) * * *

(4) * * *

(iv) For purposes of the limits on target amounts established under paragraph (c)(4)(iii) of this section, each hospital or unit that was excluded from the prospective payment system for its cost reporting period ending during FY 1996 will be classified in the same way (that is, as a psychiatric hospital or unit, or a long-term care hospital) as it was classified under subpart B of part 412 of this chapter for purposes of exclusion from prospective payment systems for its cost reporting period ending during FY 1996. If a hospital or unit was not excluded from the prospective payment system for a cost reporting period ending during FY 1996 but could qualify to be classified in more than one way under the exclusion criteria in subpart B of part 412 of this chapter, the hospital is assigned to the classification group that has the lowest limit on its target amounts.

* * * * *

(g) *Adjustments*—(1) *General rule.* HCFA may adjust the amount of the operating costs considered in establishing the rate-of-increase ceiling for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified below. When an adjustment is requested by the hospital, HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified separately identified by the hospital, and verified by the intermediary. HCFA may grant an adjustment requested by the hospital only if the hospital's operating costs exceed the rate-of-increase ceiling imposed under this section. In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long term care hospital, the amount of payment made to a hospital after an adjustment under paragraph (g)(3) of this section may not exceed the 75th percentile of the target amounts for hospitals of the same class as described in § 413.40(c)(4)(iii).

Subpart F—Specific Categories of Costs

3. In § 413.80, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

* * * * *

(h) *Limitations on bad debts.* In determining reasonable costs for hospitals, the amount of bad debts otherwise treated as allowable costs (as defined in paragraph (e) of this section) is reduced—

(1) For cost reporting periods beginning during fiscal year 1998, by 25 percent;

(2) For cost reporting periods beginning during fiscal year 1999, by 40 percent; and

(3) For cost reporting periods beginning during a subsequent fiscal year, by 45 percent.

* * * * *

4. In § 413.85, a new paragraph (h) is added to read as follows:

§ 413.85 Cost of educational activities.

* * * * *

(h) *Medicare+Choice organizations.* (1) Effective for that portion of cost reporting periods occurring on or after January 1, 1999, Medicare+Choice organizations may receive direct graduate medical education payments for the time that residents spend in nonhospital provider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs.

(2) Medicare+Choice organizations may receive direct graduate medical education payments if all of the following conditions are met—

(i) The resident spends his or her time in patient care activities.

(ii) The Medicare+Choice organization incurs ''all or substantially all'' of the costs for the training program in the nonhospital setting as defined in § 413.86(b).

(iii) There is a written agreement between the Medicare+Choice organization and the nonhospital provider that contains—

(A) A statement by the nonhospital provider that, all or substantially all of the direct graduate medical education costs as defined in paragraph (f)(1)(ii) of this section are being assumed by the Medicare+Choice organization;

(B) A statement that the nonhospital site agrees to offset the revenue received from the Medicare+Choice organization.

(C) A statement that the nonhospital site agrees to report its direct graduate medical education costs in a nonreimbursable cost center on its cost report; and

(D) A statement indicating how much time the teaching physicians will spend training residents in the nonhospital setting, subject to the provisions of §§ 415.60 and 415.70 of this chapter.

(3) A Medicare+Choice organization's allowable direct graduate medical education costs, subject to the redistribution and community support principles in § 413.85(c), consist of—

(i) Residents' salaries and fringe benefits (including travel and lodging where applicable); and

(ii) The portion of teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervising residents.

(4) Allowable direct graduate medical education costs under paragraph (h)(3) of this section are subject to the reasonable cost principles of part 413 and the reasonable compensation equivalency limits in §§ 415.60 and 415.70 of this chapter.

(5) The direct graduate medical education payment is equal to the product of—

(i) The Medicare+Choice organization's allowable direct graduate medical education costs as defined in paragraph (h)(3) of this section; and

(ii) Medicare's share of the Medicare+Choice organization's direct graduate medical education payment in the nonhospital site which is equal to the ratio of the number of Medicare beneficiaries enrolled to the total number of individuals enrolled in the Medicare+Choice organization.

(6) Direct graduate medical education payments made to Medicare+Choice organizations under this section are made from the Federal Supplementary Medical Insurance Trust Fund.

* * * * *

5. In § 413.86, the introductory text of paragraph (b) is republished, a new definition in alphabetical order is added to paragraph (b), paragraphs (i) and (j) are redesignated as paragraphs (j) and (k) respectively, paragraph (f)(2) is redesignated as new paragraph (i), paragraphs (f)(2)(i) through (vii) are redesignated as paragraphs (i)(1) through (7) respectively, the introductory text of paragraph (f)(1) is redesignated as the introductory text of paragraph (f), paragraphs (f)(1)(i) through (iii) are redesignated as paragraphs (f)(1) through (3) respectively, paragraphs (f)(1)(iii)(A) and (B) are redesignated as (f)(3)(i) and (ii) respectively, new paragraph (f)(2) and the introductory text of new paragraph (f)(3) are revised, and a new paragraph (f)(4) is added to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* For purposes of this section, the following definitions apply:

* * * * *

All or substantially all of the costs for the training program in the nonhospital setting means the residents' salaries and fringe benefits (including travel and lodging where applicable) and the

portion of the cost of teaching physicians' salaries and fringe benefits.

* * * * *

(f) * * *

(2) No individual may be counted as more than one FTE. If a resident spends time in more than one hospital or, except as provided in paragraphs (f)(3) and (4) of this section, in a nonprovider setting, the resident counts as partial FTE based on the proportion of time worked at the hospital to the total time worked. A part-time resident counts as a partial FTE based on the proportion of allowable time worked compared to the total time necessary to fill a full-time internship or residency slot.

(3) On or after July 1, 1987 and for the portion of the cost reporting period ocurring before January 1, 1999, the time residents spend in nonprovider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs is not excluded in determining the number of FTE residents in the calculation of a hospital's resident count if the following conditions are met—

* * * * *

(4) On or after July 1, 1987 and for the portion cost reporting period occurring on or after January 1, 1999, the time residents spend in nonprovider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs is not excluded in determining the number of FTE residents in the calculation of a hospital's resident count if the following conditions are met—

(i) The resident spends his or her time in patient care activities.

(ii) The written agreement between the hospital and the nonhospital provider must contain—

(A) A statement by the nonhospital provider that, all or substantially all of the direct graduate medical education costs as defined in paragraph (b) of this section are being assumed by the hospital;

(B) A statement that the nonhospital site agrees to offset the revenue received from the hospital;

(C) A statement that the nonhospital site agrees to report its direct graduate medical education costs on its cost report in a graduate medical education cost center; and

(D) A statement indicating how much time the teaching physicians will spend training residents in the nonhospital setting, subject to the provisions of §§ 415.60 and 415.70 of this chapter.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: April 28, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: May 1, 1998.

Donna E. Shalala,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 1998 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1998

I. Summary and Background

In this addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1998, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yield the greatest aggregate payment: The Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a national rate.

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III of this addendum, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV of this addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section V.

II. Proposed Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1999

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the proposed factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, would be effective with discharges occurring on or after October 1, 1998. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1999.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section V of this addendum reflect—

- Updates of 0.7 percent for all areas (that is, the market basket percentage increase of 2.6 percent minus 1.9 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1998 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 1998 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

The standardized amounts set forth in Tables 1E and 1F of section V of this addendum, which apply to ''temporary relief'' hospitals (see 62 FR 46001 for a discussion of these hospitals), reflect updates of 1.0 percent for all areas but otherwise reflect the same adjustments

as the national standardized amounts. As described in § 412.107, these hospitals receive an update that is 0.3 percentage points more than the update factor applicable to all other prospective payment hospitals for FY 1999.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (C) of the Act required that the base-year per discharge costs be updated for FY 1984 and then standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 71.3 percent. We are revising the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 1997 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d) (2)(D) and (3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: One for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines ''urban area'' as those areas within a Metropolitan Statistical Area (MSA). A ''large urban area'' is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a ''large urban area'' are referred to as ''other urban areas.'' Areas that are not included in MSAs are considered ''rural areas'' under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1996 population estimates published by the Bureau of the Census, 60 areas meet the criteria to be defined as large urban areas for FY 1999. These areas are identified by a footnote in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1999 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XIV) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1999 is equal to the market basket percentage increase minus 1.9 percentage points. The ''temporary relief'' provision under section 4401 of Public Law 105–33 provides for an update equal to the market basket percentage increase minus 1.6 percentage points for hospitals that are not Medicare-dependent, small rural hospitals, that receive no IME or DSH payments, that are located in a state in which aggregate Medicare operating payments for such hospitals were less than their aggregate allowable Medicare operating costs for their cost reporting periods beginning during FY 1995, and whose Medicare operating payments are less than their allowable Medicare operating costs for their cost reporting period beginning during FY 1999.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the proposed hospital market basket increase for FY 1999 is 2.6 percent. Thus, for FY 1999, the proposed update to the average standardized amounts equals 0.7 percent (1.0 percent for those hospitals qualifying under the ''temporary relief'' provision of Public Law 105–33).

As in the past, we are adjusting the FY 1998 standardized amounts to remove the effects of the FY 1998 geographic reclassifications and outlier payments before applying the FY 1999 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 1999.

Although the update factor for FY 1999 is set by law, we are required by section 1886(e)(3) of the Act to report to Congress on our initial recommendation of update factors for FY 1999 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to MedPAC's recommendation concerning the update factor, are set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment. Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used historical discharge data to simulate payments and compared aggregate payments using the FY 1998 relative weights and wage index to aggregate payments using the proposed FY 1999 relative weights and wage index. The same methodology was used for the FY 1998 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.999227. We adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.998946. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 1998 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to continue to apply the same FY 1999 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1998, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1999 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment. Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. We are applying an adjustment factor of 0.994019 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1998 budget neutrality adjustment factor. We note that the proposed FY 1999 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 27, 1998. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 1999 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 1999.

c. Outliers. Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for ''outlier'' cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

For FY 1998, the fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $11,050 ($10,080 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1998 standardized amounts of 0.948840 for the large urban and other areas rates and 0.9382 for the capital Federal rate.

We are proposing a fixed loss cost outlier threshold in FY 1999 equal to the prospective payment rate for the DRG plus $11,350 ($10,355 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated proposed outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the proposed FY 1999 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 1999 will result in outlier payments equal to 5.1

percent of operating DRG payments and 6.2 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts for FY 1999 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948819	0.9378
Puerto Rico	0.972962	0.9626

We apply the proposed outlier adjustment factors after removing the effects of the FY 1998 outlier adjustment factors on the standardized amounts.

Table 8A in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the August 29, 1997 final rule with comment period (62 FR 46113), effective October 1, 1998. Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.217279 or greater than 1.28985 and capital cost-to-charge ratios lower than 0.01281 or greater than 0.18084. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 1999 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

In the August 29, 1997 final rule with comment period (62 FR 46041), we stated that, based on available data, we estimated that actual FY 1997 outlier payments would be approximately 4.8 percent of actual total DRG payments. This was computed by simulating payments using actual FY 1996 bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 1997 bills but instead reflected the application of FY 1997 rates and policies to available FY 1996 bills. Our current estimate, using available FY 1997 bills, is that actual outlier payments for FY 1997 were approximately 5.5 percent of actual total DRG payments. We note that the MedPAR file for FY 1997 discharges continues to be updated.

We currently estimate that actual outlier payments for FY 1998 will be approximately 5.4 percent of actual total DRG payments, slightly higher than the 5.1 percent we projected in setting outlier policies for FY 1998. This estimate is based on simulations using the December 1997 update of the provider-specific file and the December 1997 update of the FY 1997 MedPAR file (discharge data for FY 1997 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 1998 by applying FY 1998 rates and policies to available FY 1997 bills.

In FY 1994, we began using a cost inflation factor rather than a charge inflation factor to update billed charges for purposes of estimating outlier payments. This refinement was made to improve our estimation methodology. For FY 1998, we used a cost inflation factor of minus 2.005 percent (a cost per case decrease of 2.005 percent). For FY 1999, based on more recent data, we are proposing a cost inflation factor of minus 1.831 percent to set outlier thresholds. We will reevaluate this factor when we develop the final rule for FY 1999. At that time, more recent data should be available for analysis, specifically, cost report data for cost reporting periods beginning in FY 1997.

5. FY 1999 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A (Table 1E for ''temporary relief'' hospitals) contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except for hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A and 1E). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C (Table 1F for ''temporary relief'' hospitals). These tables also include the Puerto Rico standardized amounts.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A, 1C, 1E and 1F, as set forth in this addendum, contain the proposed labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. The wage index is set forth in Tables 4A through 4F of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1999, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 1998, we will publish them in the final rule and use them in determining FY 1999 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.225
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative

to Medicare cases in other DRGs. Table 5 of section V of this addendum contains the relative weights that we propose to use for discharges occurring in FY 1999. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1999

General Formula for Calculation of Prospective Payment Rates for FY 1999

Prospective payment rate for all hospitals located outside of Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate plus, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1998 and before October 1, 1999, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1A or 1E, in section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Sections 1886(d)(5)(G) and (b)(3)(D) of the Act provide that Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1999. We are proposing to increase the hospital-specific rates by 0.7 percent (the hospital market basket percentage increase of 2.6 percent minus 1.9 percentage points) for sole community hospitals and Medicare-dependent, small rural hospitals located in all areas for FY 1999. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 1999, is the market basket rate of increase minus 1.9 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 1999, is the market basket rate of increase minus 1.9 percentage points.

b. Calculation of Hospital-Specific Rate. For sole community hospitals and Medicare-dependent, small rural hospitals, the applicable FY 1999 hospital-specific rate would be calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (0.7 percent), which is the same as the update for all prospective payment hospitals except ''temporary relief'' hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 0.999227) as discussed in section II.A.4.a of this Addendum. This resulting rate would be used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 1998, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1998 and Before October 1, 1999.

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C or 1F of section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section V of the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C or 1F of section V of the addendum) by the appropriate national wage index (see Tables 4A and 4B of section V of the addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1999

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal rate and the hospital-specific rates for FY 1999. The rates will be effective for discharges occurring on or after October 1, 1998.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate which was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966) we implemented section 4402 of the BBA, which required that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate was reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002.

For each hospital, the hospital-specific rate was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. In the FY 1998 final rule with comment period (62 FR 46012) we implemented section 4402 of the BBA, which required that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital-specific rate should be reduced by 17.78 percent. A small part of that reduction will also be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this proposed rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1998, as a result of section 4406 of the BBA, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1998, the Federal rate is $371.51. With the changes we are proposing to the factors used to establish the Federal rate, the proposed FY 1999 Federal rate is $377.25.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 1999 Federal rate. In particular, we explain why the proposed FY 1999 Federal rate has increased 1.55 percent compared to the FY 1998 Federal rate. Even though we estimate that Medicare hospital inpatient discharges will decline by approximately 2.25 between FY 1998 and FY 1999, we also estimate that aggregate capital payments will increase by 2.60 percent during this same period. This aggregate increase is primarily due to the change in the federal rate blend percentage from 70 percent to 80 percent, the 1.55 percent increase in the rate, and a projected increase in case mix.

The major factor contributing to the increase in the proposed capital Federal rate for FY 1999 relative to FY 1998 is

that the proposed FY 1999 exceptions reduction factor is 1.06 percent higher than the factor for FY 1998. The exceptions reduction factor equals 1 minus the projected percentage of exceptions payments. We estimate that the projected percentage of exceptions payments for FY 1999 will be lower than the projected percentage for FY 1998; accordingly, the proposed FY 1999 rate reflects less of a reduction to account for exceptions than the FY 1998 rate.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 1999 compared to FY 1998.

1. Standard Federal Rate Update

a. Description of the Update Framework. Under section 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 1999 under that framework is 0.2 percent. This proposal is based on a projected 0.8 percent increase in the CIPI, policy adjustment factors of -0.2, and a forecast error correction of −0.4 percent. We explain the basis for the FY 1999 CIPI projection in section II.D of this addendum. Here we describe the policy adjustments.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes (''real'' case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments (''coding effects''); and
- The annual DRG reclassification and recalibration changes may not be budget neutral (''reclassification effect'').

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 1999, we are projecting a 1.0 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.8 percent in FY 1999. Therefore, the proposed net adjustment for case-mix change in FY 1999 is -0.2 percentage points.

We estimate that DRG reclassification and recalibration result in a 0.0 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. In setting a prospective payment rate under the proposed framework, we make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1997 through an adjustment to the FY 1999 update. Because we only introduced this analytical framework in FY 1996, FY 1998 was the first year in which a forecast error adjustment could be required. We estimate that the FY 1997 CIPI was 0.4 percentage points higher than our current data show, which means that we estimate a forecast error of -0.4 percentage points for FY 1997. Therefore we are making an -0.4 percent adjustment for forecast error in FY 1999.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We have, therefore, incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 1999, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1993–1997 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.9 percent in FY 1993, 0.8 percent in FY

1994, 1.7 percent in FY 1995, 1.6 percent in FY 1996, and 0.3 percent in FY 1997. For FY 1995 and FY 1996, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was ''Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988'' by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC(1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1992 through FY 1997. Based on this analysis, we believe that all of the observed case-mix increase for FY 1993, FY 1994 and FY 1997 is real.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case-mix. Given estimates of real case mix of 0.9 percent for FY 1993, 0.8 percent for FY 1994, 1.0 percent for FY 1995, and 1.0 percent for FY 1996, and 0.3 percent for FY 1997, we estimate that case-mix constant intensity declined by an average 1.5 percent during FYs 1993 through 1997, for a cumulative decrease of 7.3 percent. If we assume that real case-mix increase was 0.9 percent for FY 1993, 0.8 percent for FY 1994, 1.4 percent for FY 1995, 1.4 percent for FY 1996 and 0.3 percent for FY 1997, we estimate that case-mix constant intensity declined by an average 1.6 percent during FYs 1993 through 1997, for a cumulative decrease of 7.7 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1999.

b. Comparison of HCFA and MedPAC Update Recommendations. MedPAC recommends a 0.0 to 0.7 percent update to the standard Federal rate and we are recommending a 0.2 percent update. There are some significant differences between the HCFA and MedPAC update frameworks, which account for the difference in the respective update recommendations. A major difference is the input price index which each framework uses as a beginning point to estimate the change in input prices since the previous year. The HCFA capital input price index (the CIPI) includes price measures for interest expense, which are an indicator of the interest rates facing hospitals during their capital purchasing decisions. The MedPAC capital market basket does not include interest expense; instead the MedPAC update framework includes an adjustment when necessary to account for the prolonged changes in interest rates. HCFA's CIPI is vintage-weighted, meaning that it takes into account price changes from past purchases of capital when determining the current period update. MedPAC's capital market basket is not vintage-weighted, accounting only for the current year price changes. This year, due to the difference between HCFA's and MedPAC's input price index, the percentage change in HCFA's CIPI is 0.8 percent, and the percentage change in MedPAC's market basket is 2.4 percent.

MedPAC and HCFA also differ in the adjustments they make to their price indices. (See Table 1 for a comparison of HCFA and MedPAC's update recommendations.) MedPAC makes an adjustment for productivity, while HCFA has not adopted an adjustment for capital productivity or efficiency. MedPAC employs the same productivity adjustment in its operating and capital framework. We have identified a total intensity factor but have not identified an adequate total productivity measure. The Commission also includes a product change adjustment to account for changes in the service content of hospital stays, which adjusts the base payment rates to eliminate overpayments in the future. MedPAC recommends a −3.0 to a −1.0 adjustment for product change for FY 1999. For FY 1999 MedPAC recommends a −0.7 to a −0.3 adjustment for productivity. We recommend a 0.0 intensity adjustment.

We recommend a −0.2 total case mix adjustment since we are projecting a 1.0 percent increase in the case mix index and we estimate that real case-mix increase will equal 0.8 percent in FY 1999. MedPAC makes a two part adjustment for case mix changes, which takes into account changes in case mix in the past year. They recommend a −0.2 to −0.0 adjustment for coding change and an 0.0 to 0.2 adjustment for within-DRG complexity change. We recommend a −0.4 adjustment for forecast error correction, and MedPAC recommends a −0.4 adjustment for forecast error correction.

The net result of these adjustments is that MedPAC's capital update framework suggests a −1.9 to 1.4 percent update. MedPAC has recommended a 0.0 to 0.7 percent update to the rate for FY 1999. This range is consistent with the PPS operating update recommended by the Commission. We describe the basis for our proposed 0.2 percent total update in the preceding section. HCFA and MedPAC's update recommendations are quite close, with HCFA's recommendation within the range recommended by MedPAC.

TABLE 1.—HCFA'S FY 1999 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION

	HCFA's update factor	MedPAC's recommendation
Capital Input Price Index	0.8	2.4
Policy Adjustment Factors:		
Productivity		−0.7 to −0.3
Intensity	0.0	
Science and Technology		0.0 to 0.5
Intensity		(1)
Real within DRG Change		(2)
Product Change		−3.0 to −1.0
Subtotal	0.0	−3.7 to −0.8
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	−1.0	
Real Across DRG Change	0.8	

TABLE 1.—HCFA'S FY 1999 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION—Continued

	HCFA's update factor	MedPAC's recommendation
Coding Change		−0.2 to −0.0
Real within DRG Change	(3)	0.0 to 0.2
Subtotal	−0.2	−0.2 to 0.2
Effect of FY 1996 Reclassification and Recalibration	0.0	
Forecast Error Correction	−0.4	−0.4
Total Update	0.2	−1.9 to 1.4

[1] Included in MedPAC's productivity measure.
[2] Included in MedPAC's case-mix adjustment.
[3] Included in HCFA's intensity factor.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 80 percent for cost reporting periods beginning in FY 1999 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model payments as if all hospitals were paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the August 29, 1997 final rule with comment period, we estimated that outlier payments for capital in FY 1998 would equal 6.18 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9382 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of this Addendum, we estimate that outlier payments for capital will equal 6.22 percent of inpatient capital-related payments based on the Federal rate in FY 1999. We are, therefore, proposing an outlier adjustment factor of 0.9378 to the Federal rate. Thus, estimated capital outlier payments for FY 1999 represent a higher percentage of total capital standard payments than in FY 1998.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 1999 is 0.9996 (0.9378/0.9382). Thus, the outlier adjustment decreases the FY 1999 Federal rate by 0.04 percent (0.9996—1) compared with the FY 1998 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the GAF are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model, described in Appendix B of this proposed rule, to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 1998, we calculated a GAF/DRG budget neutrality factor of 0.9989. For FY 1999, we are proposing a GAF/DRG budget neutrality factor of 1.0032. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 1998 to FY 1999 is 1.0032. The proposed cumulative change in the rate due to this adjustment is 1.0034 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, and the proposed incremental factor for FY 1999: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 \times 1.0032 = 1.0034$).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 1999 geographic reclassification decisions made by the MGCRB compared to FY 1998 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the

exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule.

For FY 1998, we estimated that exceptions payments would equal 3.41 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9659 (1–0.0341) in determining the Federal rate. For this proposed rule, we estimate that exceptions payments for FY 1999 will equal 2.39 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we are proposing an exceptions payment reduction factor of 0.9761 to the Federal rate for FY 1999. The proposed exceptions reduction factor for FY 1999 is 1.06 percent higher than the factor for FY 1998.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net adjustment to the FY 1999 Federal rate is 0.9761/0.9659, or 1.0106.

5. Standard Capital Federal Rate for FY 1999

For FY 1998, the capital Federal rate was $371.51. With the changes we are proposing to the factors used to establish the Federal rate, the FY 1999 Federal rate would be $377.25. The proposed Federal rate for FY 1999 was calculated as follows:

- The proposed FY 1999 update factor is 1.0020, that is, the proposed update is 0.20 percent.
- The proposed FY 1999 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 1.0032.
- The proposed FY 1999 outlier adjustment factor is 0.9378.
- The proposed FY 1999 exceptions payments adjustment factor is 0.9761.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 1999 affected the computation of the proposed FY 1999 Federal rate in comparison to the FY 1998 Federal rate. The proposed FY 1999 update factor has the effect of increasing the Federal rate by 0.20 percent compared to the rate in FY 1998, while the proposed geographic and DRG budget neutrality factor has the effect of increasing the Federal rate by 0.32 percent. The proposed FY 1999 outlier adjustment factor has the effect of decreasing the Federal rate by 0.04 percent compared to FY 1998. The proposed FY 1999 exceptions reduction factor has the effect of increasing the Federal rate by 1.06 percent compared to the exceptions reduction for FY 1998. The combined effect of all the proposed changes is to increase the proposed Federal rate by 1.55 percent compared to the Federal rate for FY 1998.

Comparison of Factors and Adjustments—FY 1998 Federal Rate and Proposed FY 1999 Federal Rate

	FY 98	Proposed FY 99	Change	Percent change
Update factor[1]	1.0090	1.0020	1.0020	0.20
GAF/DRG Adjustment Factor[1]	0.9989	1.0032	1.0032	0.32
Outlier Adjustment Factor[2]	0.9382	0.9378	0.9996	−0.04
Exceptions Adjustment Factor[2]	0.9659	0.9761	1.0106	1.06
Federal Rate	$371.51	$377.25	1.0155	1.55

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1998 to FY 1999 resulting from the application of the 1.0032 GAF/DRG budget neutrality factor for FY 1999 is 1.0032.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1999 outlier reduction factor is 0.9378/0.9382, or 0.9996.

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of this section, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a geographic adjustment factor (GAF) to both portions of the blended rate. The GAF is calculated using the operating PPS wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Since we implemented a separate GAF for Puerto Rico, we also propose to apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. We propose to apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 since the Puerto Rico specific GAF was implemented that year. The Puerto Rico GAF budget neutrality factor is 0.9989, while the DRG adjustment is 1.0033, for a combined cumulative adjustment of 1.0022. (For a more detailed explanation of this proposed change see Appendix B.)

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50%) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50%) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of the BBA.

For FY 1998, before application of the GAF, the special rate for Puerto Rico hospitals was $177.57. With the changes we are proposing to the factors used to determine the rate, the proposed FY 1999 special rate for Puerto Rico is $180.73.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1999 be determined by adjusting

the FY 1998 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1999, we are proposing that the hospital-specific rate be updated by a factor of 1.0020.

2. Exceptions Payment Adjustment Factor

For FYs 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1999, we estimate that exceptions payments will be 2.39 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we propose that the updated hospital-specific rate be reduced by a factor of 0.9761. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The proposed net adjustment to the FY 1999 hospital-specific rate is 0.9761/0.9659, or 1.0106.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1998 and FY 1999 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1998 to FY 1999 is 1.0126, which represents a proposed increase of 1.26 percent to the hospital-specific rate. For each hospital, the proposed FY 1999 hospital-specific rate is determined by multiplying the FY 1998 hospital-specific rate by the cumulative net adjustment of 1.0126.

PROPOSED FY 1999 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

	FY 98	Proposed FY 99	Net Adjustment	Percent Change
Update Factor	1.0090	1.0020	1.0020	0.20
Exceptions Payment Adjustment Factor	0.9659	0.9761	1.0106	1.06
Cumulative Adjustments	0.9746	0.9869	1.0026	1.26

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1998 to FY 1999 is 1.0020. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1998 to FY 1999 is 0.9761/0.9659, or 1.0106.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1999

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two payment methodologies—the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system.

The applicable Federal rate was determined by making adjustments as follows:

- For outliers by dividing the standard Federal rate by the outlier redution factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's GAF, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).
- If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) x (DRG weight) x (GAF) x (Large Urban Add-on, if applicable) x (COLA adjustment for hospitals located in Alaska and Hawaii) x (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable).

The result is the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of the following:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of the following:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.
- The blend percentages for cost reporting periods beginning in FY 1999 are 80 percent of the adjusted Federal rate and 20 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 80 percent of the Federal rate for

discharges occurring in cost reporting periods beginning during FY 1999. Thus, a fully prospective hospital will receive 80 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1999. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The proposed outlier thresholds for FY 1999 are in section II.A.4.c of this Addendum. For FY 1999, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $11,350.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The proposed minimum payment levels for portions of cost reporting periods occurring in FY 1999 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent ; and
- Urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

D. Capital Input Price Index

1. Background

Like the prospective payment hospital operating input price index, the Capital Input Price Index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, AHA data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the final rule with comment period for FY 1998 published in the August 29, 1997 **Federal Register** (62 FR 46050). The following **Federal Register** documents also describe development and revisions of the methodology involved with the construction of the CIPI: September 1, 1992 (57 FR 40016), May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), August 30, 1996 (61 FR 46196), and June 2, 1997 (62 FR 29953).

2. Forecast of the CIPI for Federal Fiscal Year 1999

DRI forecasts a 0.8 percent increase in the CIPI for FY 1999. This is the outcome of a projected 2.0 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 2.6 percent increase in other capital expense prices in FY 1999, partially offset by a 2.7 percent decline in vintage-weighted interest rates in FY 1999. The weighted average of these three factors produces the 0.8 percent increase for the CIPI as a whole.

IV. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

A. Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount may not exceed the 75th percentile of target amounts for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable update factor. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999, the update factor is the market basket less a percentage point between 0 and 2.5 depending on the hospital's or

unit's costs in relation to the ceiling. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7 percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 1999 for hospitals and hospital units excluded from the prospective payment system is 2.5 percent; therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 1999 would be between 0 and 2.5 percent.

In addition, section 1886(b)(3)(H) of the Act provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999, the target amount for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals will be the lower of the hospital's specific target amount or the 75th percentile target amount for hospitals in the same class. The FY 1998 75th percentile target amounts were $10,534 for psychiatric hospitals and units, $19,104 for rehabilitation hospital and units, and $37,688 for long-term care hospitals. For 1999, these 75th percentile figures must be updated by the market basket increase. Section 1886(b) of the Act was revised to change the formulas for determining bonus and relief payments for excluded hospitals and also establishes an additional bonus payment for continuous improvement, for cost reporting periods on or after October 1, 1997. Finally, a new statutory payment methodology for new hospitals and units (psychiatric, rehabilitation, and long-term care) was effective October 1, 1997 as governed by section 1886(b)(7) of the Act.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 1E, 1F, 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 1E—National Adjusted Operating Standardized Amounts for ''Temporary Relief'' Hospitals, Labor/Nonlabor
Table 1F—Adjusted Operating Standardized Amounts for ''Temporary Relief'' Hospitals in Puerto Rico, Labor/Nonlabor
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1997 and Hospital Average Hourly Wage for Federal Fiscal Year 1999 Wage Index
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4D—Average Hourly Wage for Urban Areas
Table 4E—Average Hourly Wage for Rural Areas
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes
Table 6E—Revised Diagnosis Code Titles
Table 6F—Additions to the CC Exclusions List
Table 6G—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 97 MEDPAR Update 12/97 GROUPER V15.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 97 MEDPAR Update 12/97 GROUPER V16.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 1998
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 1998

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,776.21	1,128.44	2,732.26	1,110.58

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,752.36	1,118.74	2,752.36	1,118.74
Puerto Rico	1,323.01	532.55	1,302.07	524.11

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	371.51
Puerto Rico	177.57

TABLE 1E.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR ''TEMPORARY RELIEF'' HOSPITALS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,790.09	1,134.08	2,745.92	1,116.13

TABLE 1F.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR ''TEMPORARY RELIEF'' HOSPITALS IN PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,766.12	1,124.33	2,766.12	1,124.33
Puerto Rico	1,329.63	535.21	1,308.58	526.73

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1997; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1999 WAGE INDEX

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
010001	01.4634	15.97	010097	00.9183	14.87	030006	01.5689	18.22	040005	01.0400	13.38	040118	01.3520	15.27
010004	01.0055	13.79	010098	01.1894	13.02	030007	01.3034	17.95	040007	01.8696	18.99	040119	01.1640	15.33
010005	01.1699	15.89	010099	01.1010	09.13	030008	02.2412	14.19	040008	01.0301	13.20	040124	01.0549	16.23
010006	01.4636	16.19	010100	01.3314	15.67	030009	01.2640	17.83	040010	01.3262	16.83	040126	00.9551	13.26
010007	01.1300	14.09	010101	01.0382	14.69	030010	01.4386	20.05	040011	00.9590	11.65	040134	02.6975	.....
010008	01.0838	13.76	010102	00.9504	12.71	030011	01.4734	19.48	040014	01.2138	18.12	050002	01.5241	27.86
010009	01.1456	17.50	010103	01.8119	17.65	030012	01.2358	18.04	040015	01.1668	14.80	050006	01.5662	20.69
010010	01.0888	15.40	010104	01.6869	18.66	030013	01.2951	20.90	040016	01.6762	16.66	050007	01.5312	27.11
010011	01.6411	20.28	010108	01.2192	16.69	030014	01.5263	19.07	040017	01.2700	14.62	050008	01.4438	25.60
010012	01.2728	17.45	010109	01.1224	13.41	030016	01.1871	19.00	040018	01.2583	18.08	050009	01.6484	24.26
010015	01.1428	14.04	010110	01.0248	14.97	030017	01.4718	19.72	040019	01.1438	12.08	050013	01.8476	23.25
010016	01.2538	17.40	010112	01.1997	14.59	030018	01.8083	27.57	040020	01.5404	15.42	050014	01.1816	23.57
010018	00.9607	17.72	010113	01.6522	15.97	030019	01.2636	23.65	040021	01.2056	16.15	050015	01.3820	24.35
010019	01.2435	15.00	010114	01.3201	16.49	030022	01.4160	18.79	040022	01.5321	23.41	050016	01.1889	18.74
010021	01.2461	15.83	010115	00.8706	08.92	030023	01.4822	20.04	040024	01.0031	13.38	050017	02.0973	24.47
010022	01.0069	18.25	010117	00.8624	.....	030024	01.6963	20.87	040025	00.9000	12.48	050018	01.2579	17.02
010023	01.6877	16.06	010118	01.3033	28.66	030025	01.0483	14.97	040026	01.5700	17.88	050021	01.4154	24.41
010024	01.4236	15.62	010119	00.8398	16.57	030027	01.0392	17.17	040027	01.2930	13.77	050022	01.5819	23.22
010025	01.3834	14.53	010120	01.0107	16.62	030030	01.7154	18.21	040028	01.0462	14.24	050024	01.3639	20.68
010027	00.8180	36.37	010121	01.3471	13.03	030033	01.2640	15.67	040029	01.2975	17.64	050025	01.8279	21.99
010029	01.6109	17.24	010123	01.2883	16.28	030034	01.0795	17.44	040030	00.8325	12.20	050026	01.5433	28.62
010031	01.2801	17.36	010124	01.2886	16.44	030035	01.2315	17.93	040032	00.9669	11.81	050028	01.3707	15.51
010032	00.9803	13.81	010125	01.0743	15.15	030036	01.2603	20.35	040035	00.9837	10.12	050029	01.4900	21.71
010033	01.9671	18.82	010126	01.2171	18.91	030037	02.0594	20.18	040036	01.5104	17.85	050030	01.3267	20.82
010034	01.1086	14.54	010127	01.3575	18.07	030038	01.6264	20.57	040037	01.1061	12.40	050032	01.2557	19.03
010035	01.1827	17.08	010128	00.9738	.....	030040	01.1572	14.74	040039	01.2394	13.39	050033	01.4502	24.74
010036	01.1899	17.99	010129	01.0590	12.94	030041	00.9538	14.31	040040	00.9817	15.09	050036	01.6546	15.95
010038	01.3028	19.03	010130	00.9980	15.85	030043	01.2213	17.92	040041	01.2978	17.08	050038	01.4456	29.35
010039	01.7055	17.67	010131	01.3864	17.25	030044	00.9736	16.04	040042	01.2567	15.12	050039	01.6097	21.59
010040	01.6110	18.52	010134	00.8391	10.86	030047	00.9401	18.63	040044	01.0524	13.02	050040	01.2411	32.71
010043	01.0489	11.63	010137	01.2373	18.84	030049	00.9939	20.75	040045	01.0079	17.86	050042	01.2889	22.76
010044	01.1028	15.92	010138	00.9399	12.43	030054	00.8332	14.41	040047	01.1013	15.48	050043	01.5649	31.83
010045	01.2056	14.77	010139	01.6766	20.38	030055	01.2012	17.65	040050	01.1795	12.44	050045	01.2364	18.69
010046	01.5054	17.67	010143	01.2743	15.07	030059	01.3005	22.74	040051	01.1670	13.51	050046	01.1880	22.24
010047	00.9884	12.14	010144	01.3459	16.59	030060	01.1528	17.75	040053	01.1178	15.65	050047	01.5646	34.07
010049	01.1575	13.82	010145	01.3390	16.15	030061	01.6564	20.08	040054	01.0532	13.50	050051	01.1348	20.91
010050	01.1489	14.17	010146	01.2470	16.83	030062	01.2455	16.61	040055	01.4655	15.78	050054	01.1263	18.44
010051	00.9234	11.17	010148	00.9483	.....	030064	01.7664	18.45	040058	01.0463	15.12	050055	01.3276	22.45
010052	01.0479	13.68	010149	01.3349	17.75	030065	01.7843	19.91	040060	00.9290	11.03	050056	01.3074	24.36
010053	01.0750	08.17	010150	01.1552	15.82	030067	01.0939	16.99	040062	01.6786	15.55	050057	01.5828	20.60
010054	01.1995	17.28	010152	01.2892	16.12	030068	01.1092	15.82	040064	01.0657	13.92	050058	01.4871	25.22
010055	01.4737	16.47	010155	01.0788	10.90	030069	01.4037	21.66	040066	01.1801	16.36	050060	01.5008	18.49
010056	01.3306	19.46	020001	01.5208	27.19	030071	01.0057	.....	040067	01.2165	12.63	050061	01.3507	22.13
010058	00.9765	13.47	020002	01.0595	24.09	030072	00.8620	.....	040069	01.1095	15.47	050063	01.4701	23.89
010059	01.0774	15.44	020004	01.1712	25.49	030073	01.0041	.....	040070	00.9098	14.25	050065	01.7005	21.95
010061	01.1893	15.80	020005	00.9285	28.73	030074	00.9408	.....	040071	01.6234	16.49	050066	01.2265	19.77
010062	01.0206	13.27	020006	01.1834	25.07	030075	00.8242	.....	040072	01.0982	15.41	050067	01.3204	21.48
010064	01.7552	20.86	020007	00.9834	25.64	030076	00.9614	.....	040074	01.2503	16.30	050068	01.1315	19.98
010065	01.3692	15.35	020008	01.1238	30.06	030077	00.8060	.....	040075	01.0369	12.15	050069	01.6246	24.57
010066	00.9184	10.89	020009	00.8881	25.77	030078	01.0727	.....	040076	01.0407	16.99	050070	01.3716	31.44
010068	01.2837	17.18	020010	01.0169	25.93	030079	00.8528	.....	040077	01.0621	12.57	050071	01.3791	33.07
010069	01.1851	12.84	020011	00.9299	25.75	030080	01.5008	19.77	040078	01.5099	22.64	050072	01.4414	32.14
010072	01.1579	15.22	020012	01.2746	26.15	030083	01.3763	22.10	040080	01.0790	16.38	050073	01.3063	33.68
010073	01.0650	11.04	020013	01.0266	26.76	030084	01.1228	.....	040081	00.9679	10.85	050075	01.3412	32.86
010078	01.2573	17.97	020014	01.1152	22.90	030085	01.4617	18.59	040082	01.2191	14.71	050076	01.9181	32.26
010079	01.2411	14.42	020017	01.4752	25.14	030086	01.4318	20.19	040084	01.1006	16.62	050077	01.6304	24.52
010081	01.8296	17.69	020018	00.9680	.....	030087	01.6536	19.77	040085	01.1954	15.29	050078	01.3632	25.59
010083	01.0337	15.64	020019	00.9067	.....	030088	01.4231	19.42	040088	01.4395	13.39	050079	01.5434	31.90
010084	01.5048	18.27	020020	00.7369	.....	030089	01.6391	19.70	040090	00.9349	14.77	050080	01.4214	19.44
010085	01.2796	17.32	020021	00.8551	.....	030092	01.6833	21.25	040091	01.1266	18.55	050082	01.6661	21.99
010086	01.0395	15.44	020024	01.1349	22.66	030093	01.3770	18.77	040093	00.9413	13.01	050084	01.6759	22.53
010087	01.6587	16.36	020025	01.0164	26.32	030094	01.2784	19.19	040100	01.2392	12.91	050088	00.9877	19.55
010089	01.2392	18.50	020026	01.2873	.....	030095	01.0461	18.85	040105	01.0353	13.05	050089	01.3688	18.85
010090	01.6235	17.44	020027	01.0891	.....	030099	00.9439	.....	040106	01.0675	13.53	050090	01.2668	23.85
010091	01.0247	13.51	030001	01.3399	19.87	040001	01.1079	13.42	040107	01.1428	16.75	050091	01.1370	21.99
010092	01.4011	15.82	030002	01.7944	20.96	040002	01.1468	13.33	040109	01.1342	13.95	050092	00.9386	16.26
010094	01.2128	16.01	030003	02.0396	22.65	040003	01.0880	13.97	040114	01.8758	17.98	050093	01.5500	23.90
010095	00.9779	12.73	030004	01.1011	12.52	040004	01.6709	17.69	040116	01.2656	16.72	050096	01.2374	21.29

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050097	01.3873	18.48	050204	01.5825	24.52	050313	01.2044	22.00	050443	00.9057	18.82	050571	01.5096	20.05
050099	01.4747	23.55	050205	01.2709	21.52	050315	01.3579	20.47	050444	01.2967	22.54	050573	01.6294	28.41
050100	01.6983	33.49	050207	01.2640	20.02	050317	01.2655	21.86	050446	00.9770	10.06	050575	01.1367	.....
050101	01.4168	31.68	050211	01.3186	30.67	050320	01.2324	27.70	050447	01.0672	18.58	050577	01.4644	20.19
050102	01.3532	17.01	050213	01.5794	22.96	050324	01.9664	26.19	050448	01.0974	20.95	050578	01.4689	30.62
050103	01.5661	23.46	050214	01.4659	21.31	050325	01.2308	21.08	050449	01.3366	21.14	050579	01.4970	28.52
050104	01.4815	23.94	050215	01.5572	29.63	050327	01.5599	18.67	050454	01.8425	25.82	050580	01.4380	27.74
050107	01.4511	23.02	050217	01.3457	19.08	050329	01.2928	19.88	050455	01.7746	16.56	050581	01.3930	24.39
050108	01.8295	23.87	050219	01.1139	18.83	050331	01.4843	24.20	050456	01.1694	16.92	050583	01.6266	21.88
050110	01.1656	20.59	050222	01.6256	31.91	050333	01.1427	24.96	050457	02.0310	31.03	050584	01.1966	20.18
050111	01.3578	20.16	050224	01.5705	23.23	050334	01.7269	34.59	050459	01.2985	29.51	050585	01.2772	27.19
050112	01.4824	19.36	050225	01.6075	22.02	050335	01.4534	21.39	050464	01.8738	22.01	050586	01.3490	20.52
050113	01.3756	31.25	050226	01.4119	24.79	050336	01.3695	20.14	050468	01.3879	19.71	050588	01.3220	24.70
050114	01.3693	23.13	050228	01.2880	30.89	050342	01.3706	17.71	050469	01.0972	16.63	050589	01.2474	24.07
050115	01.5640	20.46	050230	01.3342	25.40	050343	01.0225	14.95	050470	01.1474	18.51	050590	01.3578	24.92
050116	01.4487	23.36	050231	01.6681	25.54	050348	01.6579	25.44	050471	01.8883	23.41	050591	01.3784	22.87
050117	01.4515	20.79	050232	01.7123	21.50	050349	00.8825	14.57	050476	01.3512	21.10	050592	01.3661	18.46
050118	01.1901	23.81	050234	01.2536	30.23	050350	01.3957	24.28	050477	01.4936	26.90	050593	01.1846	.....
050121	01.3531	24.60	050235	01.6014	24.55	050351	01.4653	32.84	050478	00.9635	21.11	050594	01.6739	19.05
050122	01.5966	26.85	050236	01.4693	25.40	050352	01.3034	19.07	050481	01.4648	27.13	050597	01.2665	21.36
050124	01.3182	17.12	050238	01.5517	24.76	050353	01.6669	24.77	050482	01.0978	16.07	050598	01.3875	32.07
050125	01.3970	27.55	050239	01.5877	21.67	050355	00.9808	16.04	050483	01.1821	22.22	050599	01.6318	23.23
050126	01.5414	24.94	050240	01.4863	21.17	050357	01.4011	23.77	050485	01.6561	23.81	050601	01.6150	32.05
050127	01.3406	24.15	050241	01.2337	26.32	050359	01.2854	19.11	050486	01.3493	23.00	050603	01.4035	22.60
050128	01.6211	21.63	050242	01.4284	29.91	050360	01.4136	31.05	050488	01.3349	32.94	050604	01.5622	37.27
050129	01.6194	14.25	050243	01.5930	22.58	050366	01.3455	22.32	050491	01.1935	21.97	050607	01.1545	20.69
050131	01.3023	29.90	050245	01.4385	23.33	050367	01.2485	27.64	050492	01.4113	22.37	050608	01.3080	15.26
050132	01.4257	23.74	050248	01.2618	27.54	050369	01.2376	21.58	050494	01.2167	26.20	050609	01.4505	32.31
050133	01.2911	25.55	050251	01.0989	14.91	050373	01.4446	24.31	050496	01.7259	31.88	050613	01.0696	31.83
050135	01.3964	25.36	050253	01.2992	25.63	050376	01.3991	26.32	050497	00.8270	10.59	050615	01.6042	23.31
050136	01.4011	24.04	050254	01.2141	14.11	050377	00.9333	19.49	050498	01.2434	24.96	050616	01.3591	22.85
050137	01.4012	30.81	050256	01.7518	23.91	050378	01.1364	20.86	050502	01.7222	22.74	050618	01.1163	22.63
050138	01.9630	33.22	050257	01.1275	19.38	050379	00.9589	15.15	050503	01.3400	23.15	050623	02.0034	27.05
050139	01.2532	31.55	050260	01.0044	24.07	050380	01.6867	29.30	050506	01.4395	27.49	050624	01.3554	22.18
050140	01.2757	31.54	050261	01.2723	18.81	050382	01.3984	23.86	050510	01.3791	31.86	050625	01.6074	25.23
050144	01.6355	29.12	050262	01.8576	27.43	050385	01.4021	26.64	050512	01.5743	33.03	050630	01.3401	23.93
050145	01.3861	31.48	050264	01.3335	27.45	050388	00.9019	20.64	050515	01.3473	32.36	050633	01.3131	21.95
050146	01.4762	.....	050267	01.6544	27.78	050390	01.1857	16.75	050516	01.5400	26.16	050636	01.5051	26.10
050148	01.1151	21.00	050270	01.3573	24.13	050391	01.3292	21.68	050517	01.1822	19.69	050638	01.1025	24.90
050149	01.4748	22.78	050272	01.3703	21.55	050392	00.9917	18.42	050522	01.2252	30.95	050641	01.2588	14.88
050150	01.2678	23.95	050274	00.9903	21.63	050393	01.4860	17.95	050523	01.2384	28.96	050643	00.8426	.....
050152	01.3850	23.39	050276	01.2072	33.01	050394	01.5488	20.22	050526	01.3236	13.42	050644	01.0506	22.44
050153	01.6231	28.40	050277	01.4723	19.05	050396	01.6148	24.12	050528	01.2785	19.70	050660	01.4613	.....
050155	01.0917	22.33	050278	01.5669	22.63	050397	00.9890	20.00	050531	01.1762	20.18	050661	00.8186	20.05
050158	01.3649	27.94	050279	01.3441	19.04	050401	01.1257	19.64	050534	01.4679	23.66	050662	00.8651	33.41
050159	01.2998	19.09	050280	01.7639	25.90	050404	01.0765	15.96	050535	01.3453	23.23	050663	01.1547	24.12
050167	01.2885	21.83	050281	01.5490	33.56	050406	01.0708	19.56	050537	01.3680	18.57	050666	00.9460	34.46
050168	01.5276	22.07	050282	01.3068	23.58	050407	01.3597	29.45	050539	01.2567	19.52	050667	01.0189	28.01
050169	01.4399	24.49	050283	01.5231	27.35	050410	01.0632	13.08	050541	01.5665	33.44	050668	01.1332	39.35
050170	01.4906	21.04	050286	00.8525	18.46	050411	01.3589	33.17	050542	01.1186	14.45	050670	00.7487	20.84
050172	01.2523	19.87	050289	01.6964	30.78	050414	01.3074	23.74	050543	00.9409	23.72	050674	01.3219	32.55
050173	01.3729	21.72	050290	01.6895	33.81	050417	01.3155	20.45	050545	00.8583	27.87	050675	01.9709	14.65
050174	01.6799	29.40	050291	01.1544	30.54	050419	01.4360	16.25	050546	00.6946	31.14	050676	00.9474	16.75
050175	01.3660	23.84	050292	01.0469	22.19	050420	01.3375	23.41	050547	00.8417	36.25	050677	01.3998	32.89
050177	01.2731	16.69	050293	01.1254	20.70	050423	01.0173	19.31	050549	01.7120	26.33	050678	01.2229	.....
050179	01.3003	21.22	050295	01.4947	21.01	050424	01.8153	23.48	050550	01.4607	22.49	050680	01.1971	28.94
050180	01.6017	32.17	050296	01.1902	23.74	050425	01.3094	34.22	050551	01.3289	24.83	050682	00.8928	22.32
050183	01.1126	19.44	050298	01.3275	22.54	050426	01.3708	25.47	050552	01.2293	20.52	050684	01.2450	17.19
050186	01.2933	27.51	050299	01.3607	20.49	050427	00.9189	19.93	050557	01.5109	21.78	050685	01.2468	28.37
050188	01.4286	26.90	050300	01.4936	19.23	050430	01.0555	19.53	050559	01.3996	23.82	050686	01.3134	32.42
050189	01.0831	22.39	050301	01.2481	24.81	050432	01.6129	22.37	050561	01.1996	32.15	050688	01.2792	25.15
050191	01.4729	20.67	050302	01.3482	27.55	050433	01.1058	20.42	050564	01.3309	06.57	050689	01.4155	30.16
050192	01.1901	20.19	050305	01.5457	29.10	050434	01.1365	19.87	050565	01.3544	13.81	050690	01.5124	32.17
050193	01.3308	22.67	050307	01.3027	19.99	050435	01.2208	29.08	050566	00.9061	13.99	050693	01.3049	29.48
050194	01.2435	27.41	050308	01.4832	27.92	050436	00.9412	15.20	050567	01.6269	24.54	050694	01.3586	18.36
050195	01.5834	33.92	050309	01.3376	24.61	050438	01.8098	19.83	050568	01.3990	19.06	050695	01.0960	28.46
050196	01.3052	15.36	050310	01.0912	20.24	050440	01.3403	18.63	050569	01.3783	23.26	050696	02.3021	26.75
050197	01.8716	30.49	050312	01.9222	24.66	050441	02.0343	26.41	050570	01.7110	23.79	050697	01.4515	20.60

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050698	00.9075	.....	060073	01.0655	16.43	100009	01.4921	21.67	100102	01.0245	18.11	100210	01.6031	18.18
050699	00.6236	20.97	060075	01.3102	24.34	100010	01.5263	24.50	100103	00.9830	16.14	100211	01.3282	20.20
050700	01.5678	31.31	060076	01.3829	19.28	100012	01.6950	16.74	100105	01.4360	21.03	100212	01.6623	20.46
050701	01.3360	30.27	060085	00.9348	12.76	100014	01.4918	21.94	100106	01.0823	16.69	100213	01.5199	18.60
050704	01.1294	15.23	060087	01.6777	21.08	100015	01.4344	17.47	100107	01.3253	18.60	100217	01.3379	18.88
050707	01.0702	27.09	060088	00.9931	23.16	100017	01.4976	17.71	100108	01.0633	14.31	100220	01.7265	26.34
050708	01.2629	22.59	060090	00.9777	13.54	100018	01.5086	21.03	100109	01.3838	18.97	100221	01.7374	25.21
050709	01.3280	18.88	060096	01.0685	21.94	100019	01.5290	19.50	100110	01.4040	20.80	100222	01.4127	20.13
050710	01.3480	26.13	060100	01.5060	.....	100020	01.3336	23.86	100112	00.9244	12.57	100223	01.4858	18.81
050713	00.8060	.....	060103	01.2902	23.16	100022	01.9055	24.49	100113	02.1161	19.93	100224	01.4049	20.57
050714	01.3480	.....	060104	01.2502	21.91	100023	01.4358	17.35	100114	01.4078	18.20	100225	01.4014	20.59
050715	01.7138	.....	060107	01.1286	.....	100024	01.3638	19.67	100117	01.3161	19.37	100226	01.4003	18.53
050716	03.8652	.....	070001	01.7599	25.86	100025	01.8449	18.06	100118	01.2409	19.51	100228	01.3287	20.31
050717	00.8003	.....	070002	01.8086	24.34	100026	01.5872	18.06	100121	01.2121	16.03	100229	01.3032	18.10
050718	00.9336	.....	070003	01.1454	25.30	100027	00.9920	15.86	100122	01.3058	16.67	100230	01.3648	22.35
050899	00.5288	.....	070004	01.2352	24.34	100028	01.2339	18.03	100124	01.3284	14.64	100231	01.7051	16.97
060001	01.6504	20.31	070005	01.4131	24.84	100029	01.4199	19.56	100125	01.3273	18.00	100232	01.3660	19.83
060003	01.3293	18.91	070006	01.4122	27.20	100030	01.3066	19.01	100126	01.4408	18.89	100234	01.5349	18.94
060004	01.2793	20.57	070007	01.3912	24.35	100032	01.8893	17.78	100127	01.6387	19.58	100235	01.5525	17.92
060006	01.1829	18.36	070008	01.2534	22.94	100034	01.7634	19.44	100128	02.1517	21.53	100236	01.4246	19.87
060007	01.1389	15.33	070009	01.2944	24.56	100035	01.6050	17.98	100129	01.2696	17.72	100237	02.2024	23.28
060008	01.1684	15.83	070010	01.6774	20.35	100038	01.5798	18.23	100130	01.2454	18.62	100238	01.5894	13.88
060009	01.4660	21.35	070011	01.4579	23.69	100039	01.5397	21.36	100131	01.3794	20.96	100239	01.4442	19.35
060010	01.5585	22.31	070012	01.2488	23.36	100040	01.7626	17.97	100132	01.3098	19.53	100240	00.7775	15.37
060011	01.3645	22.12	070015	01.4162	24.05	100043	01.3643	15.33	100134	00.9935	13.03	100241	00.9329	13.90
060012	01.4391	18.62	070016	01.3810	23.00	100044	01.4082	21.18	100135	01.6123	17.62	100242	01.4132	16.91
060013	01.3221	16.29	070017	01.3702	24.60	100045	01.4052	19.25	100137	01.3170	18.60	100243	01.4048	24.16
060014	01.7402	.....	070018	01.4229	28.54	100046	01.4822	20.36	100138	01.0153	10.76	100244	01.4078	19.39
060015	01.5816	21.13	070019	01.2953	24.83	100047	01.7725	18.92	100139	01.1145	15.04	100246	01.4106	17.86
060016	01.2616	17.07	070020	01.3139	24.55	100048	00.9695	13.58	100140	01.2249	17.48	100248	01.6271	18.75
060018	01.2400	17.15	070021	01.2930	24.85	100049	01.3276	17.97	100142	01.2594	18.68	100249	01.3503	18.84
060020	01.6773	17.56	070022	01.8192	23.48	100050	01.1456	15.90	100144	01.2818	19.61	100252	01.2846	21.94
060022	01.6160	19.49	070024	01.3153	23.84	100051	01.2118	19.11	100146	01.0877	16.15	100253	01.5082	20.97
060023	01.6591	17.02	070025	01.8600	19.43	100052	01.4303	16.90	100147	01.0605	14.54	100254	01.5827	18.66
060024	01.7966	22.84	070026	01.1616	18.55	100053	01.2198	18.09	100150	01.3984	19.96	100255	01.2900	24.34
060027	01.6866	21.24	070027	01.2854	23.11	100054	01.3283	17.76	100151	01.7240	18.08	100256	02.0081	18.90
060028	01.4966	21.55	070028	01.5443	24.77	100055	01.3757	17.93	100154	01.5955	19.74	100258	01.6280	21.07
060029	00.9005	15.35	070029	01.3587	21.95	100056	01.4068	19.38	100156	01.2007	19.92	100259	01.4194	18.73
060030	01.3241	19.00	070030	01.2292	25.18	100057	01.4184	18.63	100157	01.5860	21.06	100260	01.4513	21.73
060031	01.6355	19.53	070031	01.2535	23.12	100060	01.7365	21.02	100159	00.9550	11.69	100262	01.3943	21.16
060032	01.4770	20.78	070033	01.4122	26.38	100061	01.4813	21.68	100160	01.2495	18.43	100263	01.2482	18.64
060033	01.0722	13.41	070034	01.3825	29.05	100062	01.7465	18.11	100161	01.7073	21.30	100264	01.4012	17.62
060034	01.5666	.....	070035	01.4072	22.69	100063	01.2890	18.31	100162	01.4540	19.83	100265	01.3352	15.01
060036	01.1694	15.76	070036	01.5709	27.95	100067	01.4095	16.81	100165	01.1337	13.18	100266	01.3566	18.10
060037	01.0286	13.56	070038	01.0707	.....	100068	01.3733	17.72	100166	01.4808	19.75	100267	01.3379	19.83
060038	01.0310	13.78	070039	00.9302	23.64	100069	01.3153	15.88	100167	01.4454	20.58	100268	01.2241	22.61
060041	00.9383	14.14	080001	01.7025	27.32	100070	01.4966	18.19	100168	01.3650	19.91	100269	01.4247	20.37
060042	01.0363	14.73	080002	01.2023	15.33	100071	01.2953	16.97	100169	01.8710	20.54	100270	00.8682	20.06
060043	00.9025	12.99	080003	01.3849	20.16	100072	01.2360	23.32	100170	01.4100	15.49	100271	01.7428	20.02
060044	01.1085	16.07	080004	01.3094	19.45	100073	01.7511	20.04	100172	01.3995	14.68	100275	01.4146	20.36
060046	01.0901	18.50	080006	01.4184	21.83	100075	01.6523	18.22	100173	01.6957	17.25	100276	01.2702	22.13
060047	00.9872	13.98	080007	01.4486	16.75	100076	01.3180	17.07	100174	01.3787	17.95	100277	01.0519	15.24
060049	01.3479	20.25	090001	01.5888	27.79	100077	01.3753	16.82	100175	01.2198	15.49	100279	01.3775	12.47
060050	01.2593	16.03	090002	01.3122	19.74	100078	01.1969	16.33	100176	02.0937	23.45	100280	01.3550	16.99
060052	01.0840	13.49	090003	01.3697	25.82	100079	01.6561	19.15	100177	01.3473	18.58	100281	01.3003	22.78
060053	01.1047	14.93	090004	01.7397	24.43	100080	01.6318	22.70	100179	01.7319	19.47	100282	01.1124	17.70
060054	01.3319	18.61	090005	01.3450	23.71	100081	01.0539	14.21	100180	01.4631	19.43	110001	01.3047	15.63
060056	00.9946	15.37	090006	01.3214	20.39	100082	01.4614	18.91	100181	01.2111	21.61	110002	01.3058	16.54
060057	01.0133	23.55	090007	01.3635	19.38	100084	01.4186	20.77	100183	01.2830	18.48	110003	01.3845	15.24
060058	00.9506	15.60	090008	01.4969	20.72	100085	01.3915	21.33	100187	01.4150	19.92	110004	01.3881	18.05
060060	00.9769	14.53	090010	01.0223	17.93	100086	01.2392	21.23	100189	01.3952	24.14	110005	01.1802	17.38
060062	00.9096	16.53	090011	02.0090	25.70	100087	01.8553	21.28	100191	01.2949	20.19	110006	01.4001	19.78
060064	01.4880	21.56	100001	01.4825	16.62	100088	01.6726	21.08	100199	01.3616	19.76	110007	01.6056	16.12
060065	01.3260	22.85	100002	01.4763	19.92	100090	01.3888	17.89	100200	01.3456	21.55	110008	01.2651	18.30
060066	01.0226	15.09	100004	01.0119	13.82	100092	01.5281	19.47	100204	01.6026	19.37	110009	01.1532	15.80
060068	01.0475	18.74	100006	01.6406	20.10	100093	01.5080	15.93	100206	01.3988	19.96	110010	02.1459	24.74
060070	01.1221	17.17	100007	01.8866	20.87	100098	01.1552	19.33	100208	01.5848	22.72	110011	01.2262	16.24
060071	01.2194	16.52	100008	01.7096	20.20	100099	01.2922	13.50	100209	01.5855	17.58	110013	01.1130	16.61

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
110014	01.0448	16.21	110101	01.1323	12.27	110198	01.3303	25.48	130048	01.0690	14.17	140081	01.0654	14.36
110015	01.1788	19.15	110103	00.9185	11.59	110200	01.8824	19.23	130049	01.2597	19.05	140082	01.4505	22.85
110016	01.2943	16.27	110104	01.0983	15.18	110201	01.5092	18.30	130054	00.8904	17.88	140083	01.3069	18.82
110017	00.8766	13.46	110105	01.2904	15.96	110203	00.9956	20.45	130056	00.8204	17.37	140084	01.2298	19.27
110018	01.1447	18.80	110107	01.8386	18.54	110204	00.8148	18.89	130060	01.3078	20.72	140086	01.1655	15.72
110020	01.3285	18.61	110108	00.9689	17.58	110205	01.0763	22.85	130061	00.9403	09.29	140087	01.3956	17.07
110023	01.2840	18.65	110109	01.0955	15.30	110207	01.1607	12.46	130063	01.1768	.....	140088	01.7029	21.97
110024	01.4669	19.21	110111	01.1955	15.74	110208	00.9903	15.74	140001	01.3044	15.14	140089	01.2384	17.29
110025	01.4282	17.90	110112	01.1297	18.83	110209	00.7381	16.57	140002	01.3201	18.33	140090	01.4953	23.24
110026	01.2060	14.58	110113	01.1014	14.21	110211	00.9586	.....	140003	01.0457	15.69	140091	01.8169	18.10
110027	01.1287	15.90	110114	01.0561	15.10	110212	01.1651	.....	140004	01.0989	16.55	140093	01.1840	18.79
110028	01.6783	20.65	110115	01.6734	22.60	110213	00.7480	.....	140005	00.9503	10.22	140094	01.3097	20.06
110029	01.3697	20.27	110118	01.0544	11.38	120001	01.8279	27.25	140007	01.4925	21.24	140095	01.3835	20.89
110030	01.2736	17.81	110120	01.0683	12.89	120002	01.2601	23.99	140008	01.5269	20.27	140097	00.9245	15.85
110031	01.2780	19.47	110121	01.2134	14.59	120003	01.1064	24.14	140010	01.3777	23.35	140100	01.3042	20.50
110032	01.3079	15.70	110122	01.3699	18.25	120004	01.2164	24.55	140011	01.1962	16.35	140101	01.2281	18.42
110033	01.4405	21.48	110124	01.3180	14.58	120005	01.2966	21.62	140012	01.2712	18.24	140102	01.1167	15.46
110034	01.6284	18.31	110125	01.2718	16.36	120006	01.3249	24.64	140013	01.5981	16.59	140103	01.4637	15.98
110035	01.4374	23.29	110127	00.9214	14.72	120007	01.6729	21.82	140014	01.2346	18.98	140105	01.3523	20.16
110036	01.7729	.....	110128	01.1853	18.34	120009	00.9647	19.58	140015	01.2859	14.77	140107	01.0723	14.19
110038	01.4872	17.19	110129	01.6924	17.61	120010	01.8131	23.76	140016	00.9826	12.09	140108	01.3529	22.83
110039	01.3748	19.83	110130	01.0679	11.85	120011	01.3231	32.97	140018	01.3572	19.73	140109	01.2235	14.65
110040	01.1392	17.40	110132	01.1281	13.98	120012	00.8889	21.42	140019	01.0877	14.26	140110	01.2260	18.89
110041	01.1919	16.68	110134	00.9052	12.22	120014	01.3437	23.53	140024	00.9826	13.82	140112	01.1475	14.27
110042	01.2326	16.85	110135	01.3155	17.76	120015	00.8945	23.63	140025	01.0844	16.04	140113	01.5963	18.16
110043	01.8013	16.83	110136	01.1358	15.43	120016	01.0773	26.99	140026	01.2533	16.60	140114	01.3451	19.18
110044	01.1835	15.11	110140	01.0384	15.81	120018	01.0119	22.29	140027	01.3199	17.12	140115	01.3318	19.21
110045	01.2010	19.00	110141	01.0430	13.17	120019	01.2134	20.93	140029	01.4133	20.69	140116	01.2572	20.69
110046	01.2702	19.27	110142	00.9278	10.94	120021	00.8363	19.89	140030	01.7236	21.88	140117	01.5466	20.39
110048	01.2958	14.77	110143	01.4312	20.93	120022	01.6938	17.36	140031	01.1981	14.47	140118	01.6712	23.20
110049	01.0595	12.66	110144	01.1053	18.09	120026	01.2420	24.30	140032	01.3088	17.51	140119	01.7295	21.17
110050	01.2663	17.24	110146	01.1084	16.74	120027	01.4788	22.77	140033	01.2949	22.13	140120	01.4493	16.54
110051	01.0328	13.87	110149	01.1383	18.93	120028	01.2495	.....	140034	01.1849	18.25	140121	01.4033	14.91
110052	01.1633	08.57	110150	01.3908	18.34	130001	00.9237	20.88	140035	01.0753	13.77	140122	01.5946	22.76
110054	01.3234	18.80	110152	01.0769	15.05	130002	01.3874	15.94	140036	01.2318	17.01	140124	01.2207	25.20
110056	01.1047	16.02	110153	01.0943	18.60	130003	01.3296	19.77	140037	01.0362	13.33	140125	01.3391	16.31
110059	01.3075	12.05	110154	01.0296	13.75	130005	01.4326	19.70	140038	01.2131	14.65	140127	01.4371	18.66
110061	01.0818	13.87	110155	01.1450	14.18	130006	01.8387	19.10	140040	01.3081	15.90	140128	01.0565	16.08
110062	00.8961	14.52	110156	01.0223	15.53	130007	01.6496	19.28	140041	01.1977	16.33	140129	01.1941	16.61
110063	01.1382	15.19	110161	01.3086	20.74	130008	00.9899	12.07	140042	01.0291	13.94	140130	01.2719	24.16
110064	01.3862	18.18	110162	00.8099	.....	130009	00.9347	15.62	140043	01.1678	17.93	140132	01.5121	23.60
110065	01.0241	12.93	110163	01.5208	18.71	130010	00.9101	19.08	140045	01.0478	15.21	140133	01.3440	20.51
110066	01.4714	20.37	110164	01.4277	21.27	130011	01.3476	19.35	140046	01.3159	15.70	140135	01.2990	16.16
110069	01.2824	18.52	110165	01.4010	18.70	130012	01.0020	22.02	140047	01.1731	16.57	140137	01.0428	17.24
110070	01.1006	17.18	110166	01.5150	18.65	130013	01.3101	19.25	140048	01.3315	21.58	140138	01.0982	14.18
110071	01.1356	11.04	110168	01.7223	20.47	130014	01.3693	17.03	140049	01.5511	20.89	140139	01.1145	15.86
110072	01.0173	12.51	110169	01.1931	18.66	130015	00.9264	17.50	140051	01.5114	19.42	140140	01.1906	18.58
110073	01.2272	14.32	110171	01.4942	20.46	130016	00.9173	17.25	140052	01.3990	17.19	140141	01.3059	14.79
110074	01.4541	17.24	110172	01.4235	21.34	130017	01.1709	16.55	140053	02.0119	18.24	140143	01.1514	17.94
110075	01.3591	16.51	110174	00.9675	15.24	130018	01.7382	17.35	140054	01.3761	22.90	140144	01.0424	17.37
110076	01.5073	20.04	110176	02.5217	20.96	130019	01.1641	17.99	140055	00.9267	13.99	140145	01.1604	16.19
110078	01.7630	21.73	110177	01.5788	19.87	130021	00.9692	15.30	140058	01.2943	16.54	140146	01.0612	16.77
110079	01.3856	19.30	110178	02.9393	16.83	130022	01.2437	18.53	140059	01.2264	15.77	140147	01.3933	15.62
110080	01.2083	18.22	110179	01.1105	20.42	130024	01.0773	18.00	140061	01.1070	14.15	140148	01.8210	17.46
110082	02.1044	21.81	110181	00.9493	14.70	130025	01.1043	14.20	140062	01.2892	26.44	140150	01.5671	25.02
110083	01.7148	20.98	110183	01.3855	21.18	130026	01.1592	19.63	140063	01.4336	22.90	140151	01.0723	19.64
110086	01.2336	13.04	110184	01.2704	19.37	130027	00.8923	19.57	140064	01.3056	17.80	140152	01.1727	21.63
110087	01.3469	20.67	110185	01.1237	15.51	130028	01.2366	16.83	140065	01.5316	24.12	140155	01.3024	17.47
110089	01.2215	17.12	110186	01.3551	15.59	130029	01.1095	17.62	140066	01.2213	15.60	140158	01.3851	22.91
110091	01.3195	19.73	110187	01.3406	19.18	130030	00.8668	18.40	140067	01.7964	17.99	140160	01.2137	16.52
110092	01.1612	15.18	110188	01.3408	18.49	130031	00.9616	16.44	140068	01.2411	18.98	140161	01.2198	18.07
110093	00.9463	11.69	110189	01.1257	17.51	130034	01.0096	19.35	140069	01.0622	16.04	140162	01.7869	17.93
110094	01.0827	14.08	110190	01.0981	15.41	130035	01.0090	19.47	140070	01.2423	17.31	140164	01.4470	20.29
110095	01.3819	14.69	110191	01.3627	17.96	130036	01.3025	13.66	140074	01.0465	17.25	140165	01.1078	13.70
110096	01.1427	14.85	110192	01.4687	21.41	130037	01.2910	16.97	140075	01.4117	14.13	140166	01.3247	17.54
110097	01.0561	14.44	110193	01.2426	17.89	130043	00.9508	15.79	140077	01.2351	16.89	140167	01.1271	15.06
110098	00.9804	15.28	110194	00.9257	14.21	130044	01.1952	10.50	140079	01.2417	17.22	140168	01.1771	16.36
110100	01.0482	16.39	110195	01.1159	13.34	130045	00.9956	15.28	140080	01.6294	20.58	140170	01.0929	13.81

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
140171	00.9828	12.95	140300	01.5868	23.72	150074	01.6442	19.08	160030	01.3920	18.00	160109	01.0993	14.76
140172	01.6579	18.91	150001	01.1146	19.10	150075	01.1491	15.63	160031	01.1010	14.50	160110	01.5914	15.04
140173	00.9180	16.52	150002	01.5657	18.51	150076	01.1723	21.36	160032	01.1307	16.27	160111	01.0133	12.29
140174	01.5914	20.01	150003	01.6957	19.07	150077	01.1446	17.40	160033	01.8232	17.57	160112	01.4106	16.06
140176	01.2364	19.89	150004	01.5034	19.60	150078	01.0704	17.34	160034	01.1382	15.15	160113	01.0099	13.35
140177	01.3461	17.27	150005	01.1843	18.97	150079	01.2096	15.90	160035	01.0002	16.77	160114	01.0199	15.40
140179	01.3420	20.09	150006	01.2849	18.75	150082	01.5715	18.22	160036	00.9948	19.22	160115	01.0123	15.21
140180	01.4432	20.79	150007	01.2112	23.06	150084	01.9333	21.85	160037	01.0667	17.12	160116	01.1438	16.05
140181	01.4074	19.27	150008	01.4533	20.34	150086	01.3607	16.73	160039	01.0325	17.49	160117	01.4481	16.57
140182	01.4406	15.18	150009	01.3592	17.29	150088	01.3868	18.67	160040	01.3654	17.43	160118	01.0367	15.14
140184	01.2681	15.18	150010	01.3797	16.85	150089	01.4239	19.56	160041	01.1128	14.40	160120	01.0155	11.33
140185	01.5341	17.64	150011	01.2435	18.61	150090	01.2347	18.94	160043	01.0103	14.43	160122	01.0901	18.27
140186	01.3891	20.30	150012	01.6411	21.50	150091	01.0113	16.53	160044	01.2318	15.75	160124	01.2824	16.47
140187	01.4964	16.84	150013	01.1763	15.74	150092	01.0684	14.87	160045	01.7278	18.63	160126	01.0538	15.68
140188	00.9537	13.20	150014	01.5052	18.35	150094	00.9903	17.59	160046	00.9983	11.21	160129	01.0655	15.03
140189	01.1992	17.72	150015	01.2408	20.85	150095	01.0953	18.41	160047	01.3985	16.53	160130	01.2040	14.80
140190	01.1009	16.47	150017	01.8553	19.45	150096	01.0629	17.95	160048	01.0493	13.27	160131	01.0625	14.49
140191	01.4397	22.26	150018	01.3501	18.66	150097	01.1098	17.18	160049	00.9436	12.67	160134	00.9376	12.70
140193	01.1059	14.46	150019	01.1845	14.94	150098	01.1241	16.63	160050	01.0811	15.90	160135	01.0142	15.11
140197	01.2541	16.79	150020	01.1512	13.22	150099	01.2843	17.66	160051	00.9312	13.79	160138	01.0655	14.59
140199	01.1100	17.14	150021	01.6165	18.36	150100	01.6568	17.51	160052	01.0078	14.41	160140	01.1400	16.69
140200	01.4621	21.75	150022	01.1136	17.58	150101	01.1211	19.95	160054	01.0121	13.35	160142	01.1009	15.31
140202	01.3111	21.58	150023	01.6061	19.97	150102	01.1598	12.14	160055	00.9931	13.61	160143	00.9819	15.10
140203	01.1647	22.19	150024	01.3888	18.92	150103	00.9512	19.44	160056	01.1741	14.54	160145	01.1407	14.85
140205	00.9675	15.10	150025	01.4888	17.26	150104	01.0823	16.22	160057	01.3770	17.28	160146	01.4416	16.29
140206	01.2352	20.80	150026	01.2078	18.81	150105	01.3386	17.27	160058	01.7722	19.62	160147	01.3353	17.49
140207	01.3748	20.67	150027	01.0411	17.50	150106	01.0981	15.15	160060	01.1076	15.15	160151	01.1079	16.09
140208	01.6884	24.61	150029	01.3890	20.73	150109	01.4355	18.03	160061	01.1171	16.03	160152	01.0039	14.39
140209	01.6540	14.76	150030	01.2567	17.00	150110	01.0392	15.28	160062	00.9454	15.66	160153	01.8054	18.68
140210	01.0799	14.99	150031	01.0946	15.03	150111	01.1656	15.08	160063	01.1546	16.85	170001	01.1951	16.74
140211	01.2061	19.50	150032	01.8612	19.41	150112	01.3267	18.92	160064	01.6269	18.72	170004	01.0677	13.57
140213	01.3176	21.25	150033	01.5986	21.73	150113	01.2282	18.52	160065	01.0220	16.04	170006	01.1576	15.84
140215	01.0859	14.05	150034	01.4872	21.18	150114	01.0692	17.02	160066	01.1481	15.76	170008	00.9797	13.42
140217	01.3129	22.52	150035	01.5616	19.66	150115	01.3601	17.18	160067	01.4072	17.52	170009	01.2006	17.07
140218	01.0528	15.20	150036	01.0369	18.92	150122	01.1376	18.53	160068	01.0212	15.43	170010	01.3037	16.52
140220	01.1009	17.26	150037	01.2481	18.31	150123	01.0540	14.07	160069	01.4919	17.39	170012	01.4254	15.95
140223	01.6061	23.21	150038	01.4463	18.74	150124	01.1303	15.08	160070	00.9590	14.55	170013	01.3060	16.49
140224	01.3499	22.21	150039	00.9739	16.62	150125	01.4487	19.02	160072	01.0768	14.19	170014	01.0310	17.45
140228	01.6505	17.83	150042	01.2851	16.54	150126	01.4679	20.96	160073	00.9704	13.66	170015	00.9909	15.23
140230	00.9336	15.97	150043	01.0389	16.96	150127	01.0314	15.89	160074	01.0474	15.71	170016	01.6836	22.29
140231	01.5659	21.90	150044	01.2351	18.03	150128	01.2813	18.07	160075	01.1806	15.77	170017	01.2077	18.08
140233	01.8328	18.16	150045	01.1303	16.21	150129	01.1222	24.48	160076	01.0409	17.07	170018	01.1380	14.10
140234	01.2359	17.76	150046	01.4926	16.66	150130	01.3484	16.53	160077	01.0730	11.38	170019	01.2203	16.42
140236	01.0046	14.29	150047	01.6176	19.11	150132	01.4914	18.89	160079	01.4250	17.85	170020	01.2910	15.58
140239	01.7410	18.31	150048	01.2267	18.58	150133	01.1644	17.44	160080	01.2026	17.07	170022	01.1333	16.84
140240	01.4331	22.78	150049	01.1415	15.37	150134	01.1629	17.56	160081	01.0971	15.21	170023	01.3998	17.38
140242	01.6616	22.15	150050	01.2343	16.20	150136	00.8607	20.95	160082	01.9400	17.26	170024	01.1587	13.03
140245	01.2200	15.19	150051	01.4673	18.63	150145	03.7024	.....	160083	01.6760	17.94	170025	01.1942	16.10
140246	01.1107	12.78	150052	01.1526	14.50	160001	01.2869	18.91	160085	00.9877	15.41	170026	01.1060	13.45
140250	01.3085	23.24	150053	01.0122	18.92	160002	01.1579	14.48	160086	00.9510	15.78	170027	01.3149	15.96
140251	01.3487	20.32	150054	01.0954	15.80	160003	01.0272	14.39	160088	01.1853	16.87	170030	01.0487	12.94
140252	01.4849	23.55	150056	01.8319	23.14	160005	01.0962	15.72	160089	01.2264	16.16	170031	00.8797	12.80
140253	01.3970	14.08	150057	02.3139	18.25	160007	01.0149	13.81	160090	01.0121	15.53	170032	01.0645	15.46
140258	01.5859	22.07	150058	01.7734	20.30	160008	01.1611	14.74	160091	01.0690	12.74	170033	01.3680	15.54
140271	01.0367	14.78	150059	01.3588	21.47	160009	01.2225	15.87	160092	01.0710	15.37	170034	01.0172	13.85
140275	01.2393	16.99	150060	01.1408	14.72	160012	01.0015	15.93	160093	01.0603	15.71	170035	00.8913	14.00
140276	02.0402	21.39	150061	01.2235	15.33	160013	01.2088	16.74	160094	01.1200	15.60	170036	00.9101	14.08
140280	01.3633	17.80	150062	01.1228	17.69	160014	00.9551	14.41	160095	01.0625	14.27	170037	01.0368	16.58
140281	01.6894	22.14	150063	01.0545	16.90	160016	01.2452	17.25	160097	01.0952	14.59	170038	00.9220	12.68
140285	01.2529	26.86	150064	01.2804	16.17	160018	00.9374	13.77	160098	01.0002	15.05	170039	01.0941	14.19
140286	01.1496	18.53	150065	01.2062	18.66	160020	01.0918	13.84	160099	00.9166	12.91	170040	01.6491	19.98
140288	01.7475	22.93	150066	01.0055	17.04	160021	01.0569	15.16	160101	01.0582	17.55	170041	01.0778	11.22
140289	01.3491	16.32	150067	01.1690	16.20	160023	01.0267	14.75	160102	01.4133	16.83	170044	00.9909	13.97
140290	01.3868	20.06	150069	01.2637	17.75	160024	01.5208	18.26	160103	01.0464	16.71	170045	01.0394	15.99
140291	01.3999	23.45	150070	01.0571	17.16	160026	01.0784	17.30	160104	01.2767	17.17	170049	01.2914	18.45
140292	01.1440	20.62	150071	01.1147	14.38	160027	01.1359	15.04	160106	01.0226	15.39	170051	00.9111	13.41
140294	01.1807	18.17	150072	01.2157	16.13	160028	01.2457	29.74	160107	01.1907	16.26	170052	01.1183	14.31
140297	03.6153	42.09	150073	01.0490	20.53	160029	01.5683	20.19	160108	01.1241	15.98	170053	00.9906	13.83

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
170054	01.0978	13.64	170150	01.1546	14.00	180067	01.9594	17.80	190034	01.1818	15.36	190155	00.7261	16.10
170055	01.0862	14.51	170151	00.9807	12.49	180069	01.1523	17.35	190035	01.4071	.....	190156	01.0217	12.27
170056	00.8958	14.93	170152	01.0368	14.21	180070	01.1536	13.55	190036	01.6970	20.46	190158	01.1942	20.62
170057	00.9835	12.90	170160	01.0025	11.81	180072	01.1750	15.81	190037	00.9050	11.28	190160	01.2638	17.06
170058	01.1567	17.07	170164	01.0153	15.00	180075	01.6587	12.66	190039	01.4112	16.98	190161	01.0650	14.05
170060	01.1064	14.95	170166	01.1487	17.40	180078	01.0858	18.97	190040	01.3258	20.34	190162	01.0985	19.57
170061	01.1697	14.15	170171	01.0693	12.88	180079	01.2462	12.71	190041	01.5988	19.98	190164	01.2766	14.89
170063	00.8588	11.84	170175	01.3959	17.67	180080	01.0624	15.09	190043	01.0674	12.52	190167	01.1707	18.78
170066	01.0038	13.66	170176	01.6751	23.94	180087	01.3024	14.29	190044	01.1587	21.11	190170	00.9093	13.69
170067	01.0353	14.44	170182	01.4638	21.54	180088	01.5749	21.13	190045	01.4309	21.34	190173	01.4304	19.33
170068	01.2562	17.01	170183	02.0468	15.05	180092	01.2237	15.98	190046	01.4383	18.69	190175	01.6161	20.46
170070	01.0330	12.73	170184	01.7569	.....	180093	01.3704	16.69	190048	01.2557	15.02	190176	01.6907	20.76
170073	01.1796	15.56	180001	01.3958	17.78	180094	01.0627	12.86	190049	00.9841	15.98	190177	01.7756	18.85
170074	01.1210	13.48	180002	01.1271	17.71	180095	01.1988	13.96	190050	01.0974	14.68	190178	00.9828	10.60
170075	00.9167	10.71	180004	01.1260	15.79	180099	01.2011	12.83	190053	01.1305	12.51	190182	01.2638	19.89
170076	01.0539	12.59	180005	01.2488	18.80	180101	01.2773	16.26	190054	01.3434	16.77	190183	01.1934	15.22
170077	00.9613	12.55	180006	00.9249	12.49	180102	01.4712	18.17	190059	00.8927	14.11	190184	01.0340	15.61
170079	00.9525	12.75	180007	01.4823	16.55	180103	02.2948	18.25	190060	01.4334	14.94	190185	01.3460	19.22
170080	00.9784	12.95	180009	01.4022	20.11	180104	01.5599	16.85	190064	01.5728	22.67	190186	00.9219	14.11
170081	00.9351	11.91	180010	01.9106	18.13	180105	00.9458	15.32	190065	01.4938	18.08	190190	00.8904	12.48
170082	00.9822	12.06	180011	01.3471	18.96	180106	00.8758	13.13	190071	00.9048	12.68	190191	01.2236	19.55
170084	00.9112	29.87	180012	01.4127	18.41	180108	00.8320	13.64	190077	00.9403	13.95	190196	00.9611	16.22
170085	00.9055	12.47	180013	01.4174	17.18	180115	01.0027	16.43	190078	01.1522	12.81	190197	01.1855	17.51
170086	01.7294	18.97	180014	01.7276	18.00	180116	01.3502	16.15	190079	01.3216	17.02	190199	01.2599	10.95
170088	00.9532	10.70	180016	01.3059	14.83	180117	01.1374	17.24	190081	00.9314	13.70	190200	01.5884	20.17
170089	00.9736	12.13	180017	01.3626	14.79	180118	01.0477	11.54	190083	01.1019	16.51	190201	01.0893	18.83
170090	00.9993	11.36	180018	01.3348	15.32	180120	01.0374	16.25	190086	01.3466	15.04	190202	01.2511	18.81
170092	00.8320	12.01	180019	01.2531	16.76	180121	01.3111	14.05	190088	01.3395	19.01	190203	01.5559	22.35
170093	00.9126	12.94	180020	01.1266	16.86	180122	01.1060	15.93	190089	01.0953	12.63	190204	01.4971	20.42
170094	00.9330	16.97	180021	01.0695	14.26	180123	01.4019	18.92	190090	01.1136	16.03	190205	01.9390	18.91
170095	01.1284	13.41	180023	00.9119	14.80	180124	01.4305	16.87	190092	01.4163	21.19	190206	01.6020	21.26
170097	00.9893	14.02	180024	01.4455	15.89	180125	01.1083	17.87	190095	01.0410	15.00	190207	01.2223	17.10
170098	01.1633	14.54	180025	01.1748	16.40	180126	01.2108	11.42	190098	01.4884	19.10	190208	00.8302	10.93
170099	01.2147	12.86	180026	01.2509	13.57	180127	01.3576	16.72	190099	01.2333	17.67	190218	01.1701	17.36
170100	01.0623	13.73	180027	01.3139	15.23	180128	01.1777	16.18	190102	01.5818	18.10	190227	00.8692	30.27
170101	00.9176	13.46	180028	01.0814	17.78	180129	01.0392	15.30	190103	00.8978	11.00	190231	01.4412	13.27
170102	01.0142	12.99	180029	01.3033	16.86	180130	01.4202	17.56	190106	01.1713	17.85	190235	01.6524	.....
170103	01.2839	15.92	180030	01.1614	16.38	180132	01.2846	16.14	190109	01.2506	14.31	190236	01.4037	.....
170104	01.4518	20.25	180031	01.1179	14.02	180133	01.3195	22.68	190110	00.9671	13.76	200001	01.4021	16.84
170105	01.0732	15.22	180032	01.0939	16.97	180134	01.0985	14.44	190111	01.5353	19.83	200002	01.1101	23.41
170106	00.9680	10.48	180033	01.1805	16.08	180136	01.6663	19.72	190112	01.6582	20.08	200003	01.1421	16.08
170109	00.9935	16.20	180034	01.1401	15.45	180138	01.2692	17.70	190113	01.3372	19.82	200006	01.0161	18.67
170110	01.0011	15.05	180035	01.6042	19.58	180139	01.1175	17.89	190114	01.0360	13.12	200007	01.0238	16.64
170112	01.0327	13.55	180036	01.2081	18.69	180140	01.0543	22.60	190115	01.2011	19.30	200008	01.2487	20.05
170113	01.0910	15.23	180037	01.3315	19.96	180141	01.7850	.....	190116	01.1612	15.43	200009	01.8248	20.28
170114	01.0309	14.05	180038	01.4356	15.84	190001	00.9574	22.06	190118	01.0653	13.08	200012	01.1253	16.83
170115	00.9963	12.43	180040	01.9798	18.75	190002	01.7233	18.29	190120	01.0389	13.99	200013	01.1175	15.39
170116	01.0782	15.42	180041	01.1067	14.94	190003	01.4208	18.68	190122	01.3127	13.83	200015	01.2672	17.80
170117	00.9897	13.41	180042	01.1356	15.00	190004	01.4619	16.87	190124	01.6393	19.92	200016	01.0377	16.48
170119	00.9907	13.57	180043	01.1907	19.10	190005	01.5814	16.64	190125	01.5379	18.47	200018	01.2179	16.45
170120	01.3100	12.93	180044	01.2212	17.26	190006	01.3309	15.31	190128	01.1054	18.95	200019	01.2635	18.12
170122	01.7443	18.82	180045	01.3799	17.34	190007	01.0296	14.17	190130	00.9720	12.14	200020	01.1295	19.42
170123	01.7876	18.98	180046	01.1868	16.65	190008	01.6750	19.37	190131	01.2328	17.54	200021	01.1599	18.52
170124	00.9925	13.55	180047	01.0316	14.66	190009	01.3215	14.70	190133	00.9626	12.86	200023	00.9037	14.08
170126	00.9618	12.53	180048	01.2731	16.28	190010	01.1133	16.24	190134	01.0045	16.50	200024	01.4120	19.55
170128	00.9122	14.70	180049	01.3932	16.09	190011	01.1696	15.32	190135	01.4522	20.69	200025	01.1595	19.60
170131	01.1686	12.10	180050	01.2650	17.25	190013	01.3473	16.26	190136	01.2074	11.11	200026	01.0448	15.97
170133	01.1015	16.69	180051	01.3715	15.43	190014	01.1457	16.03	190138	00.8637	20.29	200027	01.2326	16.90
170134	00.9044	13.04	180053	01.1052	14.96	190015	01.2583	18.74	190140	00.9874	11.98	200028	00.9883	16.14
170137	01.1656	17.98	180054	01.1345	15.82	190017	01.3983	14.84	190142	00.9321	14.53	200031	01.2524	15.04
170139	01.0729	12.91	180055	01.2319	14.70	190018	01.1580	17.48	190144	01.2665	16.26	200032	01.2974	17.40
170142	01.2852	17.02	180056	01.1288	16.33	190019	01.7296	19.64	190145	01.0068	14.74	200033	01.7963	.....
170143	01.1875	15.24	180058	01.0463	13.04	190020	01.1693	17.77	190146	01.6123	21.10	200034	01.2207	18.06
170144	01.6583	13.79	180059	00.8671	15.28	190025	01.3335	13.33	190147	00.9695	14.36	200037	01.2183	16.94
170145	01.1081	14.18	180063	01.1789	11.94	190026	01.5020	18.00	190148	00.9710	13.91	200038	01.1302	19.07
170146	01.5294	18.68	180064	01.3252	14.68	190027	01.5422	17.46	190149	01.0118	14.40	200039	01.2896	19.74
170147	01.2024	18.98	180065	01.0035	12.89	190029	01.1748	17.67	190151	01.2151	12.80	200040	01.1290	19.05
170148	01.4951	17.89	180066	01.1563	18.08	190033	00.9756	10.02	190152	01.4896	20.71	200041	01.1543	18.64

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
200043	00.7365	18.37	220017	01.3977	14.12	220153	01.0232	22.56	230100	01.1670	15.57	230213	00.9993	15.25
200050	01.1575	17.35	220019	01.1645	19.12	220154	00.9445	22.42	230101	01.1095	18.36	230216	01.5651	17.80
200051	01.0114	19.57	220020	01.2268	19.47	220162	01.2697	.....	230103	01.0400	20.72	230217	01.2521	22.94
200052	01.0406	15.56	220023	00.6107	19.30	220163	02.1199	24.87	230104	01.5911	22.43	230219	00.8768	19.28
200055	01.1614	17.37	220024	01.2158	21.22	220171	01.6207	22.92	230105	01.7568	20.27	230221	00.8720	24.54
200062	00.9472	15.91	220025	01.1292	18.70	230001	01.1902	18.07	230106	01.3003	20.51	230222	01.4495	19.43
200063	01.3059	18.34	220028	01.4722	21.01	230002	01.2759	20.69	230107	00.9076	14.72	230223	01.3326	21.85
200066	01.1622	16.74	220029	01.1851	24.16	230003	01.1581	18.62	230108	01.2121	18.37	230227	01.4724	21.56
210001	01.4925	21.16	220030	01.1533	15.00	230004	01.7098	22.86	230110	01.3576	17.83	230230	01.6794	22.01
210002	01.9930	18.07	220031	01.9215	.....	230005	01.2844	18.86	230113	00.9199	20.15	230232	00.9510	17.15
210003	01.6014	21.93	220033	01.2840	20.97	230006	01.1008	18.53	230115	01.0388	17.19	230235	01.0957	16.27
210004	01.3657	23.18	220035	01.2837	24.51	230007	00.9571	18.95	230116	00.9248	16.31	230236	01.3249	21.58
210005	01.2762	19.38	220036	01.5965	21.66	230012	00.8563	12.18	230117	01.8993	26.08	230239	01.1389	13.72
210006	01.1400	17.16	220038	01.2959	26.32	230013	01.4022	21.05	230118	01.2189	17.43	230241	01.1643	17.52
210007	01.7371	25.17	220041	01.2273	23.41	230015	01.2010	20.91	230119	01.2966	21.44	230244	01.3959	21.17
210008	01.3938	19.26	220042	01.2464	24.13	230017	01.5028	28.89	230120	01.1514	18.40	230253	00.9911	18.85
210009	01.8131	21.72	220046	01.3702	23.14	230019	01.4696	22.20	230121	01.2299	20.61	230254	01.2624	21.20
210010	01.1495	15.64	220049	01.3541	18.47	230020	01.7404	21.30	230122	01.3428	19.37	230257	00.7824	18.51
210011	01.3419	19.67	220050	01.1242	19.98	230021	01.5653	18.27	230124	01.1625	18.52	230259	01.1882	21.59
210012	01.6374	22.07	220051	01.2183	21.10	230022	01.2543	18.76	230128	01.3957	22.70	230264	01.6939	14.86
210013	01.3219	19.82	220052	01.3247	24.59	230024	01.4460	22.98	230130	01.6687	22.34	230269	01.3782	22.69
210015	01.2992	19.60	220053	01.2325	20.02	230027	01.1127	17.48	230132	01.3690	24.82	230270	01.1731	20.20
210016	01.8243	22.33	220055	01.2994	13.69	230029	01.5562	19.51	230133	01.2687	17.99	230273	01.4465	22.29
210017	01.2218	15.90	220057	01.4056	22.67	230030	01.3295	16.78	230135	01.3180	23.03	230275	00.5262	19.58
210018	01.3056	21.29	220058	01.1529	18.51	230031	01.4311	19.42	230137	01.1560	18.31	230276	00.6644	21.40
210019	01.5805	18.39	220060	01.2952	25.42	230032	01.7502	19.80	230141	01.6323	22.96	230277	01.2430	23.05
210022	01.5039	21.14	220062	00.5762	19.65	230034	01.2739	18.80	230142	01.3057	19.01	230278	01.4214	17.82
210023	01.3373	21.51	220063	01.2663	19.84	230035	01.0906	20.47	230143	01.3112	18.35	230279	00.6584	15.95
210024	01.5453	20.11	220064	01.2830	21.51	230036	01.2229	20.75	230144	01.1462	20.61	230280	00.9997	12.33
210025	01.3740	18.95	220065	01.2956	19.95	230037	01.1368	17.66	230145	01.1934	18.05	240001	01.5448	22.78
210026	01.3830	17.97	220066	01.3789	21.73	230038	01.6671	21.58	230146	01.2748	19.36	240002	01.7516	20.94
210027	01.2945	17.66	220067	01.3230	22.81	230040	01.1819	20.58	230147	01.3954	17.47	240004	01.5826	21.10
210028	01.2229	18.31	220070	01.2219	19.89	230041	01.2518	19.27	230149	01.1505	16.14	240005	00.9321	17.38
210029	01.2710	14.51	220071	01.9036	24.06	230042	01.2328	20.08	230151	01.4024	21.20	240006	01.1358	20.97
210030	01.1576	19.24	220073	01.3068	25.94	230046	01.9346	23.28	230153	01.1458	16.66	240007	01.0656	15.50
210031	01.2844	16.76	220074	01.4397	28.44	230047	01.3796	19.17	230154	00.9500	14.32	240008	01.1157	19.71
210032	01.1792	18.71	220075	01.4818	20.18	230053	01.6002	24.58	230155	01.0478	17.35	240009	00.9226	14.31
210033	01.2737	18.96	220076	01.1822	.....	230054	01.8075	19.80	230156	01.7144	23.80	240010	01.9880	24.41
210034	01.3510	20.17	220077	01.7973	24.84	230055	01.1704	19.01	230157	01.2003	22.20	240011	01.1532	17.81
210035	01.2976	19.08	220079	01.1889	21.38	230056	00.9664	15.57	230159	01.3458	17.84	240013	01.3350	18.17
210037	01.2736	18.27	220080	01.3076	19.50	230058	01.0994	18.45	230162	01.0605	19.93	240014	01.0774	20.29
210038	01.4108	21.78	220081	01.0949	26.78	230059	01.5035	19.06	230165	01.8769	22.77	240016	01.3927	18.22
210039	01.1817	19.69	220082	01.2893	19.76	230060	01.2247	18.53	230167	01.7979	19.39	240017	01.0659	17.25
210040	01.2977	23.05	220083	01.1675	21.76	230062	00.9643	15.71	230169	01.3453	23.25	240018	01.2884	17.23
210043	01.3140	21.29	220084	01.3389	26.31	230063	01.3202	19.89	230171	01.0161	14.41	240019	01.2645	21.39
210044	01.3429	21.63	220086	01.7743	.....	230065	01.3020	20.37	230172	01.1855	19.10	240020	01.1651	20.04
210045	01.0234	11.01	220088	01.6385	23.68	230066	01.3702	21.26	230174	01.3641	20.84	240021	01.0408	16.96
210048	01.2485	22.46	220089	01.2541	21.52	230069	01.1366	22.24	230175	03.7062	.....	240022	01.1137	19.13
210049	01.1655	17.20	220090	01.2774	21.06	230070	01.6318	20.99	230176	01.2172	22.12	240023	00.9935	19.88
210051	01.4205	22.78	220092	01.2563	29.72	230071	01.1883	22.62	230178	01.0025	17.48	240025	01.1418	16.29
210054	01.3626	21.94	220094	01.4476	18.10	230072	01.2717	19.89	230180	01.1699	14.55	240027	01.0297	16.33
210055	01.2721	22.10	220095	01.2243	18.87	230075	01.4810	20.07	230184	01.1598	18.23	240028	01.1529	18.52
210056	01.3993	17.67	220098	01.3462	17.39	230076	01.3291	22.97	230186	01.2450	15.20	240029	01.1603	18.10
210057	01.4721	24.67	220100	01.2697	25.09	230077	01.9370	19.36	230188	01.1176	15.81	240030	01.2834	17.99
210058	01.4828	18.67	220101	01.4781	24.24	230078	01.2553	16.56	230189	00.9585	15.39	240031	00.9756	16.71
210059	01.2611	21.98	220104	01.4373	23.69	230080	01.2411	19.94	230190	01.0724	24.98	240036	01.5650	20.26
210060	01.2540	.....	220105	01.3499	20.60	230081	01.2578	16.66	230191	00.9623	17.58	240037	01.0233	18.19
210061	01.1774	18.56	220106	01.2300	23.09	230082	01.1162	17.08	230193	01.2584	17.77	240038	01.4973	24.56
220001	01.2775	27.10	220108	01.1989	22.28	230085	01.0922	18.91	230195	01.3347	21.46	240040	01.2454	20.15
220002	01.5400	18.62	220110	02.0189	29.18	230086	00.9486	17.36	230197	01.4218	21.17	240041	01.1644	17.48
220003	01.1363	17.49	220111	01.2643	21.79	230087	01.0889	16.19	230199	01.1115	19.29	240043	01.1966	17.00
220006	01.4328	20.39	220116	01.9394	.....	230089	01.2754	23.86	230201	01.1456	15.09	240044	01.1842	18.04
220008	01.2873	21.58	220119	01.3311	23.69	230092	01.3562	19.28	230204	01.4307	21.66	240045	01.0477	21.34
220010	01.3417	21.70	220123	01.0577	23.94	230093	01.2768	19.05	230205	01.0377	16.37	240047	01.5436	21.26
220011	01.1581	28.81	220126	01.3572	19.87	230095	01.1791	17.06	230207	01.2683	19.90	240048	01.2443	22.64
220012	01.3404	35.18	220128	00.8929	21.18	230096	01.0974	24.02	230208	01.3205	17.76	240049	01.7730	22.43
220015	01.1918	22.77	220133	00.9081	27.36	230097	01.6121	19.12	230211	00.9047	21.59	240050	01.1639	24.71
220016	01.3686	21.58	220135	01.3076	26.10	230099	01.1463	19.68	230212	01.0827	23.46	240051	01.0123	18.49

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
240052	01.3097	18.64	240139	00.9667	16.59	250042	01.2795	15.45	260003	01.1304	13.48	260105	01.8950	20.26
240053	01.5210	20.25	240141	01.1702	21.09	250043	00.9854	12.25	260004	01.0516	13.31	260107	01.4575	19.81
240056	01.2479	21.74	240142	01.1458	19.27	250044	01.0267	15.41	260005	01.6188	20.26	260108	01.8607	21.29
240057	01.8120	22.68	240143	00.9530	13.94	250045	01.2004	18.75	260006	01.5009	20.55	260109	00.9884	12.92
240058	00.9732	14.79	240144	01.0302	16.74	250047	00.9728	15.45	260008	01.3629	16.53	260110	01.6869	15.15
240059	01.0983	21.81	240145	01.0332	15.57	250048	01.5487	15.26	260009	01.2581	16.29	260113	01.1477	14.76
240061	01.8085	24.36	240146	00.9306	19.10	250049	00.8905	11.34	260011	01.6980	18.75	260115	01.2593	17.02
240063	01.4355	22.81	240148	01.0485	14.55	250050	01.2741	13.43	260012	01.1050	12.84	260116	01.0817	15.06
240064	01.2914	21.93	240150	00.9199	12.84	250051	00.8862	10.57	260013	01.1935	15.32	260119	01.2307	15.30
240065	01.0337	12.44	240152	01.0164	19.91	250057	01.2316	15.59	260015	01.2710	16.27	260120	01.1985	16.64
240066	01.3815	21.19	240153	01.0056	15.23	250058	01.1873	14.40	260017	01.2333	15.54	260122	01.1738	12.73
240069	01.1890	19.07	240154	01.0449	17.00	250059	01.0410	14.21	260018	00.9010	10.09	260123	01.0789	14.05
240071	01.1104	19.55	240155	00.8945	19.40	250060	00.7799	08.90	260019	01.0877	14.52	260127	01.0109	15.92
240072	01.0197	16.80	240157	01.0929	14.13	250061	00.8857	17.69	260020	01.7249	20.07	260128	01.0125	10.96
240073	00.9372	16.40	240160	01.0026	16.30	250063	00.8515	12.44	260021	01.4657	17.59	260129	01.2317	15.69
240075	01.1813	19.91	240161	00.9970	14.99	250065	00.9231	12.61	260022	01.2879	19.05	260131	01.2494	18.04
240076	01.0703	21.04	240162	01.0628	16.59	250066	00.9111	13.53	260023	01.4980	34.66	260134	01.1693	15.67
240077	00.9446	14.31	240163	00.9935	17.79	250067	01.1344	14.67	260024	00.9639	12.96	260137	01.7177	15.26
240078	01.4829	23.66	240166	01.1120	15.60	250068	00.8476	11.36	260025	01.3101	14.68	260138	01.8700	21.26
240079	01.0280	15.37	240169	00.9128	15.98	250069	01.3525	17.35	260027	01.6202	21.58	260141	01.9087	19.54
240080	01.5649	22.34	240170	01.1056	17.38	250071	00.9308	11.63	260029	01.2388	19.02	260142	01.1144	15.65
240082	01.1936	17.03	240171	01.0726	15.79	250072	01.4199	18.43	260030	01.1850	10.36	260143	00.9985	12.75
240083	01.3140	17.90	240172	00.9529	15.82	250077	00.9293	11.97	260031	01.6090	18.38	260147	00.9753	13.55
240084	01.2434	20.04	240173	00.8928	16.66	250078	01.4771	14.93	260032	01.6629	18.43	260148	00.9263	10.32
240085	00.9719	17.41	240179	01.0132	16.66	250079	00.8824	17.44	260034	01.0573	15.99	260158	01.0224	12.65
240086	01.0849	17.64	240184	00.9886	13.04	250081	01.3211	16.03	260035	01.0046	11.74	260159	00.9863	19.26
240087	01.2026	14.87	240187	01.1930	18.48	250082	01.4033	13.51	260036	01.0154	15.34	260160	01.0544	15.82
240088	01.3869	19.81	240193	01.0223	17.61	250083	00.9515	12.27	260039	01.1258	13.86	260162	01.5557	20.64
240089	00.9840	17.72	240196	00.6319	22.78	250084	01.1844	17.73	260040	01.6625	15.28	260163	01.2241	14.59
240090	01.0465	14.69	240200	00.8680	14.48	250085	00.9749	12.58	260042	01.2599	17.82	260164	00.9519	13.24
240093	01.3293	17.64	240205	00.9138	.....	250088	01.0022	16.53	260044	01.0487	15.91	260166	01.2346	19.78
240094	00.9622	20.49	240206	00.8411	.....	250089	01.2121	13.89	260047	01.4767	17.20	260172	00.9986	12.55
240096	00.9800	17.63	240207	01.2109	21.80	250093	01.1337	14.36	260048	01.2953	20.70	260173	01.0314	12.21
240097	01.0196	21.79	240210	01.2788	22.90	250094	01.3184	15.45	260050	01.0431	16.40	260175	01.1175	16.34
240098	00.9533	20.33	240211	00.9038	14.75	250095	01.0053	15.92	260052	01.3352	19.75	260176	01.6500	17.62
240099	01.0631	13.30	250001	01.5514	17.39	250096	01.1988	17.01	260053	01.1737	11.73	260177	01.2846	20.19
240100	01.2892	18.97	250002	00.9820	17.13	250097	01.3216	15.83	260054	01.3147	16.07	260178	01.4976	20.94
240101	01.1825	20.41	250003	01.0084	18.40	250098	00.8380	16.66	260055	00.9908	10.97	260179	01.6431	20.52
240102	00.9603	12.87	250004	01.4873	17.91	250099	01.2609	14.01	260057	01.1503	16.96	260180	01.7064	18.96
240103	01.0505	16.28	250005	00.9412	09.95	250100	01.2905	15.26	260059	01.2691	14.66	260183	01.5177	16.58
240104	01.2301	21.81	250006	00.9862	14.60	250101	00.8850	16.65	260061	01.1020	14.06	260186	01.4347	17.27
240105	00.9597	13.46	250007	01.2808	19.42	250102	01.6048	17.06	260062	01.2033	18.91	260188	01.2198	18.37
240106	01.4052	26.55	250008	00.9814	13.33	250104	01.4486	17.62	260063	01.0697	15.44	260189	00.8526	10.87
240107	00.9916	17.31	250009	01.2300	17.50	250105	00.9434	13.40	260064	01.3240	16.92	260190	01.2045	18.00
240108	01.0081	17.24	250010	01.0398	12.77	250107	00.8815	14.53	260065	01.8217	18.25	260191	01.2516	18.58
240109	00.9484	12.99	250012	00.9311	19.88	250109	00.8949	15.37	260066	01.0266	15.01	260193	01.2915	26.66
240110	00.9668	16.33	250015	01.0847	10.44	250112	00.9717	13.07	260067	00.8671	13.74	260195	01.2198	16.53
240111	01.0666	19.00	250017	00.9989	16.64	250117	01.0769	14.70	260068	01.6718	20.21	260197	01.1405	25.99
240112	00.9994	14.73	250018	00.9513	13.02	250119	01.1164	12.45	260070	01.0429	14.48	260198	01.3077	16.46
240114	00.9257	14.74	250019	01.4335	17.00	250120	01.1106	13.09	260073	01.1387	12.89	260200	01.2666	19.43
240115	01.6191	21.63	250020	00.9455	13.52	250122	01.2481	16.91	260074	01.3021	13.93	260205	01.3757	.....
240116	00.9343	13.96	250021	00.8815	08.57	250123	01.2786	18.73	260077	01.7307	17.13	270002	01.3026	14.15
240117	01.1588	18.18	250023	00.9552	12.77	250124	00.9126	11.59	260078	01.1782	14.62	270003	01.2653	21.02
240119	00.8258	20.58	250024	00.9084	13.60	250125	01.3155	16.38	260079	01.0765	14.32	270004	01.6961	18.01
240121	00.9397	21.27	250025	01.2071	18.06	250126	00.9754	14.17	260080	01.0516	11.77	270006	00.9221	16.35
240122	01.0517	18.93	250027	00.9570	11.90	250127	00.8201	.....	260081	01.6079	18.83	270007	00.8770	12.23
240123	01.0109	15.03	250029	00.8773	12.96	250128	01.0941	12.06	260082	01.1768	13.93	270009	01.1201	19.32
240124	00.9676	18.39	250030	00.9739	14.45	250131	01.0232	11.03	260085	01.5720	19.71	270011	01.0312	18.28
240125	00.9278	11.73	250031	01.3079	18.54	250134	00.9919	16.70	260086	01.0978	15.09	270012	01.5921	18.33
240127	01.1171	14.25	250032	01.2608	16.21	250136	00.8821	17.66	260091	01.7219	19.76	270014	01.8294	17.81
240128	01.1221	15.77	250033	01.0514	15.66	250138	01.2904	17.90	260094	01.1985	16.48	270016	00.8992	15.97
240129	01.0143	17.56	250034	01.6577	14.46	250141	01.2616	15.71	260095	01.4477	16.89	270017	01.2378	19.09
240130	00.9625	15.66	250035	00.8681	13.84	250145	00.8232	10.04	260096	01.5927	22.03	270019	01.0001	15.86
240132	01.2209	22.40	250036	00.9700	14.48	250146	00.9630	13.97	260097	01.2007	14.79	270021	01.1771	16.67
240133	01.1986	17.72	250037	00.9132	10.05	250148	01.0955	19.08	260100	01.0435	15.72	270023	01.3055	21.22
240135	00.8725	14.11	250038	00.9700	14.37	250149	00.8930	12.04	260102	01.0442	18.57	270026	00.8850	14.97
240137	01.2258	18.97	250039	00.9941	13.36	260001	01.7040	18.05	260103	01.2885	17.51	270027	01.1158	12.40
240138	00.9522	12.97	250040	01.3026	16.20	260002	01.4644	21.10	260104	01.7564	18.42	270028	01.1217	15.50

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
270029	00.9579	18.18	280051	01.0812	15.15	290021	01.6244	21.94	310041	01.4067	23.71	320023	01.0840	16.73
270032	01.1262	16.20	280052	01.0846	13.32	290022	01.7010	17.94	310042	01.2416	23.53	320030	01.1495	16.84
270033	00.8614	15.58	280054	01.2607	17.98	290027	00.9528	17.23	310043	01.1431	20.86	320031	00.8258	17.05
270035	01.0099	18.28	280055	00.9182	14.40	290029	00.9833	.....	310044	01.2847	20.70	320032	00.9003	17.10
270036	00.8802	12.78	280056	00.9752	14.45	290032	01.4115	22.30	310045	01.4639	27.19	320033	01.1552	22.76
270039	01.0024	15.36	280057	00.9835	15.40	290036	00.9391	51.78	310047	01.3682	24.34	320035	01.0299	22.89
270040	01.1080	18.24	280058	01.3029	18.34	290038	00.9923	19.95	310048	01.2820	22.81	320037	01.2216	23.31
270041	01.1062	15.74	280060	01.5871	18.65	290039	01.3219	.....	310049	01.2927	25.66	320038	01.2326	16.83
270044	01.1453	13.98	280061	01.4293	17.06	300001	01.3935	21.15	310050	01.2323	23.05	320046	01.2948	20.88
270046	00.9619	14.85	280062	01.0987	13.35	300003	01.9474	23.98	310051	01.3560	24.27	320048	01.2823	14.43
270048	01.1003	16.41	280064	01.0290	15.52	300005	01.2963	20.28	310052	01.2951	22.60	320057	00.9566	.....
270049	01.7959	20.21	280065	01.2779	18.54	300006	01.1897	19.05	310054	01.3459	24.60	320058	00.7512	.....
270050	01.0985	17.98	280066	01.0654	12.50	300007	01.1006	18.33	310057	01.3357	21.17	320059	01.0062	.....
270051	01.3389	21.08	280068	00.9650	09.45	300008	01.2856	19.44	310058	01.1060	24.61	320060	00.8691	.....
270052	01.0417	17.86	280070	01.0106	11.19	300009	01.1291	19.41	310060	01.2001	18.63	320061	01.1829	.....
270057	01.2418	18.93	280073	01.0056	13.68	300010	01.1911	19.48	310061	01.2520	21.39	320062	00.8839	.....
270058	00.9052	13.38	280074	01.1152	14.02	300011	01.3744	22.78	310062	01.3076	20.98	320063	01.3049	16.68
270059	00.7748	15.90	280075	01.1776	13.70	300012	01.3351	21.77	310063	01.3696	21.02	320065	01.2881	16.05
270060	00.9593	15.08	280076	01.0520	13.95	300013	01.1894	17.57	310064	01.3195	24.32	320067	00.8533	15.74
270063	00.9957	14.82	280077	01.3183	17.95	300014	01.2855	19.49	310067	01.3185	22.76	320068	00.9287	16.40
270072	00.8066	13.85	280079	01.0646	10.61	300015	01.2367	18.54	310069	01.2924	22.42	320069	00.9720	10.83
270073	01.1764	11.83	280080	01.1041	13.61	300016	01.2347	18.83	310070	01.4173	23.33	320070	00.9663	.....
270074	00.8989	.....	280081	01.7829	18.66	300017	01.3038	21.18	310072	01.3090	21.25	320074	01.0956	18.00
270075	00.9172	.....	280082	01.0111	13.50	300018	01.3126	20.22	310073	01.6320	25.21	320079	01.1739	17.24
270076	00.7682	.....	280083	01.0442	14.26	300019	01.2127	19.97	310074	01.4198	22.66	330001	01.1965	25.94
270079	00.8978	13.71	280084	01.0067	11.42	300020	01.3060	20.45	310075	01.4342	24.11	330002	01.4751	25.86
270080	01.1930	16.88	280088	01.7594	.....	300021	01.0885	17.07	310076	01.4454	29.78	330003	01.3224	15.68
270081	01.0272	12.52	280089	01.0559	17.29	300022	01.0547	17.35	310077	01.6821	25.08	330004	01.2944	19.87
270082	01.0743	16.17	280090	00.9608	14.34	300023	01.3847	20.45	310078	01.3970	23.81	330005	01.8198	23.51
270083	01.0915	15.30	280091	01.1064	14.54	300024	01.2611	19.20	310081	01.3268	21.63	330006	01.2708	26.60
270084	00.8820	14.83	280092	00.9797	13.94	300028	01.2139	17.28	310083	01.3087	22.57	330007	01.3120	18.50
280001	01.1071	14.99	280094	01.1321	15.40	300029	01.3666	22.33	310084	01.3916	21.85	330008	01.1599	16.96
280003	02.1164	18.85	280097	00.9649	11.94	300033	01.1353	16.28	310086	01.2187	21.24	330009	01.2889	30.94
280005	01.4013	17.73	280098	00.9699	10.71	300034	02.0334	22.41	310087	01.3224	20.28	330010	01.3763	12.50
280009	01.7524	18.19	280101	01.1002	13.51	310001	01.8034	25.91	310088	01.2207	20.56	330011	01.3000	19.95
280011	00.8691	12.42	280102	00.9272	12.45	310002	01.8222	25.58	310090	01.3629	24.24	330012	01.6985	29.74
280013	01.9321	21.09	280104	00.9947	13.11	310003	01.2776	23.65	310091	01.2907	20.77	330013	02.0896	17.73
280014	00.9234	13.35	280105	01.2732	18.10	310005	01.2322	21.08	310092	01.3142	21.20	330014	01.3552	29.38
280015	01.0353	15.29	280106	00.9818	14.48	310006	01.2754	22.66	310093	01.1662	20.42	330016	01.0658	16.94
280017	01.1197	14.01	280107	01.0910	11.45	310008	01.3528	23.42	310096	01.8816	23.74	330019	01.3051	27.77
280018	01.0384	13.73	280108	01.1303	15.09	310009	01.3133	23.49	310105	01.3010	24.12	330020	01.0469	14.30
280020	01.6464	19.60	280109	00.9214	10.58	310010	01.2849	20.79	310108	01.4365	24.39	330023	01.2634	23.47
280021	01.2618	16.90	280110	01.0019	11.44	310011	01.2108	21.51	310110	01.2714	20.54	330024	01.8333	31.66
280022	01.0382	14.17	280111	01.2495	18.27	310012	01.6569	26.14	310111	01.3831	23.33	330025	01.1052	13.57
280023	01.3988	16.83	280114	00.9200	13.00	310013	01.4193	21.54	310112	01.3408	21.93	330027	01.3596	31.94
280024	00.9571	11.90	280115	00.9323	16.12	310014	01.6973	25.20	310113	01.2698	21.81	330028	01.4711	25.53
280025	00.9430	12.87	280117	01.0899	15.93	310015	01.9538	25.55	310115	01.3332	21.37	330029	01.0082	19.40
280026	01.2113	14.79	280118	00.9335	16.45	310016	01.2558	24.30	310116	01.2758	22.74	330030	01.2557	16.43
280028	01.1079	15.15	280119	00.8703	.....	310017	01.3828	23.95	310118	01.2657	22.78	330033	01.2798	16.66
280029	01.1344	15.52	280123	00.8938	.....	310018	01.1258	21.68	310119	01.7103	30.34	330034	00.6391	30.46
280030	01.7044	27.82	280125	01.2392	.....	310019	01.6672	24.86	310120	01.0971	20.79	330036	01.3056	19.62
280031	01.0150	13.61	290001	01.6935	23.03	310020	01.3887	22.65	320001	01.3857	17.43	330037	01.1546	15.46
280032	01.3002	16.45	290002	00.9128	16.13	310021	01.3817	23.63	320002	01.3670	19.13	330038	01.2340	15.52
280033	01.0406	15.69	290003	01.6810	25.76	310022	01.3156	21.10	320003	01.1238	13.29	330041	01.3043	36.69
280035	01.0337	13.65	290005	01.4874	20.79	310024	01.3022	23.65	320004	01.2792	14.96	330043	01.3194	33.46
280037	01.0415	15.48	290006	01.2561	19.14	310025	01.2009	21.93	320005	01.3531	20.75	330044	01.3085	18.10
280038	01.0023	15.49	290007	01.8502	27.93	310026	01.2043	23.19	320006	01.4170	14.55	330045	01.4176	27.45
280039	01.0469	15.70	290008	01.2147	19.60	310027	01.3265	21.41	320009	01.6244	17.17	330046	01.4603	30.06
280040	01.6269	19.18	290009	01.6221	17.91	310028	01.2526	21.94	320011	01.0077	17.05	330047	01.1772	16.85
280041	00.9134	12.05	290010	01.2399	14.00	310029	01.9458	23.14	320012	00.9924	16.53	330048	01.2917	17.45
280042	01.0344	15.14	290011	00.9015	15.52	310031	02.8675	22.58	320013	01.1521	17.67	330049	01.2386	17.85
280043	01.0147	15.47	290012	01.3753	21.50	310032	01.3467	22.51	320014	01.1514	14.63	330053	01.1874	14.83
280045	01.0969	16.10	290013	01.0527	18.62	310034	01.2580	21.58	320016	01.1211	15.17	330055	01.6244	29.81
280046	01.1072	12.37	290014	00.9699	17.46	310036	01.1893	19.11	320017	01.2111	16.75	330056	01.4395	30.22
280047	01.0907	18.01	290015	00.9197	15.18	310037	01.3653	27.57	320018	01.5827	18.43	330057	01.6763	18.74
280048	01.2131	13.82	290016	01.1837	22.67	310038	01.9545	26.13	320019	01.4848	19.57	330058	01.3057	16.66
280049	01.0412	15.08	290019	01.3426	19.74	310039	01.2827	21.22	320021	01.7502	17.99	330059	01.5787	33.67
280050	00.9263	13.71	290020	01.0445	17.29	310040	01.2393	23.99	320022	01.2213	16.24	330061	01.3166	24.36

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
330062	01.0733	17.10	330179	00.9045	14.60	330275	01.2903	22.06	340031	01.0066	12.83	340129	01.2985	18.11
330064	01.4892	32.11	330180	01.1983	16.27	330276	01.1685	17.92	340032	01.3624	18.77	340130	01.3225	19.83
330065	01.2030	18.54	330181	01.3528	31.07	330277	01.1085	16.57	340035	01.1531	17.23	340131	01.5209	18.16
330066	01.2766	17.98	330182	02.5453	30.48	330279	01.3577	19.05	340036	01.2139	18.25	340132	01.3256	16.27
330067	01.3948	20.64	330183	01.4677	19.94	330285	01.8458	22.66	340037	01.0873	14.46	340133	01.1268	14.74
330072	01.4097	29.92	330184	01.3264	27.58	330286	01.3379	24.38	340038	01.1012	16.68	340137	01.1310	15.62
330073	01.2255	15.82	330185	01.2827	24.72	330290	01.6841	32.27	340039	01.2681	19.88	340138	01.0625	16.94
330074	01.3127	17.25	330186	00.5618	20.30	330293	01.1953	15.09	340040	01.8191	18.61	340141	01.7229	20.28
330075	01.0589	17.73	330188	01.1830	18.71	330304	01.2338	27.04	340041	01.2094	17.69	340142	01.2350	15.79
330078	01.4268	17.96	330189	01.3232	16.54	330306	01.4286	28.10	340042	01.2260	15.70	340143	01.4228	19.62
330079	01.2427	17.22	330191	01.3283	18.17	330307	01.2663	19.23	340044	01.1020	18.87	340144	01.3656	18.96
330080	01.3325	27.06	330193	01.3516	28.64	330314	01.3785	21.50	340045	00.9956	14.02	340145	01.4314	18.88
330084	01.0696	17.68	330194	01.7808	31.20	330315	16.0413	30.36	340047	01.8288	19.42	340146	01.1145	14.28
330085	01.2974	18.59	330195	01.6416	31.94	330316	01.3084	22.23	340048	01.0275	05.23	340147	01.2535	19.21
330086	01.2666	26.87	330196	01.2608	27.80	330327	00.9713	16.98	340049	01.0355	17.75	340148	01.4937	18.55
330088	01.0531	22.43	330197	01.1287	16.79	330331	01.3121	29.10	340050	01.2003	17.95	340151	01.2078	15.67
330090	01.5991	17.92	330198	01.3837	23.21	330332	01.2892	26.99	340051	01.3356	16.79	340153	01.8814	19.87
330091	01.3584	18.01	330199	01.3382	25.90	330333	01.2444	51.91	340052	01.0223	21.14	340155	01.3840	21.24
330092	01.0542	14.25	330201	01.6866	40.72	330336	01.3094	30.29	340053	01.6440	19.44	340156	00.7966	.....
330094	01.2399	17.06	330202	01.3886	27.41	330338	01.2333	20.97	340054	01.2239	14.35	340158	01.1278	16.49
330095	01.2452	18.40	330203	01.3959	19.61	330339	00.9320	18.87	340055	01.2769	17.40	340159	01.1375	16.21
330096	01.1887	15.81	330204	01.3552	28.88	330340	01.2344	22.43	340060	01.1293	17.75	340160	01.1672	14.11
330097	01.2171	15.32	330205	01.1763	19.85	330350	01.6747	28.46	340061	01.7280	20.31	340162	01.1787	16.56
330100	00.7936	28.03	330208	01.2263	26.41	330353	01.2772	31.43	340063	01.0171	22.75	340164	01.4579	20.69
330101	01.8106	30.39	330209	01.1811	24.53	330354	01.5676	.....	340064	01.2364	17.05	340166	01.2776	19.58
330102	01.3312	17.00	330211	01.2029	18.46	330357	01.3809	34.81	340065	01.2854	15.89	340168	00.4875	15.15
330103	01.2449	16.63	330212	01.1468	24.26	330359	00.9373	29.31	340067	01.1587	18.20	340171	01.2031	.....
330104	01.4313	27.69	330213	01.1701	18.39	330372	01.1964	22.25	340068	01.2139	16.56	340173	01.2130	.....
330106	01.6949	34.04	330214	01.8173	31.94	330381	01.2852	29.21	340069	01.8495	20.34	350001	00.9857	14.51
330107	01.3314	26.04	330215	01.2026	17.11	330385	01.1940	29.15	340070	01.3026	18.49	350002	01.8548	16.86
330108	01.2467	16.97	330218	01.0527	20.44	330386	01.2158	23.26	340071	01.0889	15.86	350003	01.1701	16.63
330111	01.0751	15.08	330219	01.6629	20.87	330387	00.7923	30.68	340072	01.1279	15.86	350004	01.9174	18.34
330114	00.9490	15.82	330221	01.2904	29.07	330389	01.7245	31.92	340073	01.5386	19.84	350005	01.0598	14.07
330115	01.2405	16.12	330222	01.2606	18.36	330390	01.3751	31.67	340075	01.1939	16.88	350006	01.5142	16.25
330116	00.9611	15.34	330223	01.0770	16.39	330393	01.7444	25.45	340080	01.0339	15.49	350007	00.8879	13.24
330118	01.6591	20.00	330224	01.2569	21.50	330394	01.5407	18.21	340084	01.0889	16.12	350008	00.9420	16.74
330119	01.7636	32.85	330225	01.1739	24.76	330395	01.3488	33.16	340085	01.1663	16.33	350009	01.1468	17.04
330121	01.0383	15.12	330226	01.2590	17.82	330396	01.1754	31.55	340087	01.1169	16.53	350010	01.1050	13.74
330122	01.0650	22.97	330229	01.3257	16.25	330397	01.3150	30.46	340088	01.1258	18.13	350011	01.8836	20.64
330125	01.9179	20.66	330230	01.3791	29.27	330398	01.3550	29.49	340089	01.0120	13.83	350012	01.1086	13.55
330126	01.1519	22.70	330231	01.0674	29.53	330399	01.2625	29.60	340090	01.1444	17.83	350013	01.1051	16.53
330127	01.3403	29.65	330232	01.2445	17.76	340001	01.4796	17.91	340091	01.7002	19.89	350014	00.9841	13.14
330128	01.2625	29.68	330233	01.4948	30.49	340002	01.8416	18.45	340093	01.0697	13.96	350015	01.7381	16.56
330132	01.2001	13.55	330234	02.3119	31.88	340003	01.1252	17.14	340094	01.4789	18.27	350016	01.0963	11.47
330133	01.3701	34.67	330235	01.1204	19.21	340004	01.4483	18.79	340096	01.1483	17.40	350017	01.3990	16.68
330135	01.1994	19.14	330236	01.4074	28.47	340005	01.1650	14.89	340097	01.1445	17.69	350018	01.0846	17.93
330136	01.2894	19.26	330238	01.1749	15.02	340006	01.0428	14.76	340098	01.6889	19.32	350019	01.6863	18.72
330140	01.7769	18.58	330239	01.1666	16.21	340007	01.1704	16.96	340099	01.2134	13.03	350021	01.0260	12.00
330141	01.3850	24.49	330240	01.3279	27.67	340008	01.1373	17.84	340101	01.0627	11.87	350023	00.9286	15.16
330144	00.9394	15.19	330241	01.9705	21.51	340010	01.2998	17.56	340104	00.9970	11.37	350024	01.0368	16.47
330148	01.0767	15.47	330242	01.3423	25.14	340011	01.1622	15.71	340105	01.3725	18.85	350025	01.0095	14.00
330151	01.1172	14.68	330245	01.3076	17.00	340012	01.3162	17.04	340106	01.2505	20.04	350027	00.9540	14.46
330152	01.4137	30.10	330246	01.3839	25.91	340013	01.2800	17.33	340107	01.3591	17.08	350029	00.8728	12.98
330153	01.7338	16.97	330247	00.9015	27.38	340014	01.5587	22.23	340109	01.3186	17.38	350030	01.0496	16.65
330154	01.7268	.....	330249	01.1933	16.18	340015	01.3007	20.37	340111	01.1989	14.63	350033	00.9198	14.40
330157	01.3501	19.72	330250	01.2870	17.98	340016	01.1912	16.24	340112	00.9917	15.24	350034	00.9924	17.45
330158	01.4999	20.48	330252	00.9461	16.84	340017	01.2474	14.31	340113	01.8577	20.59	350035	00.9005	10.21
330159	01.2907	17.88	330254	01.1696	17.12	340018	01.2456	16.25	340114	01.5500	20.34	350038	01.0922	15.28
330160	01.4736	29.42	330258	01.3355	30.01	340019	01.0224	20.26	340115	01.5723	19.35	350039	01.0288	14.75
330162	01.2185	27.06	330259	01.5025	23.47	340020	01.1977	19.04	340116	01.8178	19.81	350041	01.0442	17.60
330163	01.1905	19.14	330261	01.2944	26.17	340021	01.2336	17.51	340119	01.2970	16.41	350042	01.1142	15.19
330164	01.4954	19.87	330263	01.0305	17.91	340022	01.0586	16.91	340120	01.0817	13.56	350043	01.5670	14.65
330166	01.0125	13.56	330264	01.2135	21.71	340023	01.3771	17.77	340121	01.0648	15.43	350044	00.8768	11.49
330167	01.6539	29.65	330265	01.3931	16.33	340024	01.1393	16.33	340123	01.0906	15.57	350047	01.1941	16.54
330169	01.4639	32.41	330267	01.3643	23.95	340025	01.2234	15.47	340124	01.0127	13.98	350049	01.3354	13.86
330171	01.4007	23.94	330268	00.9663	15.02	340027	01.2058	16.89	340125	01.4796	16.50	350050	00.9591	11.89
330175	01.1894	15.10	330270	01.9872	31.03	340028	01.5976	16.85	340126	01.3940	16.50	350051	00.9832	15.74
330177	00.9633	14.78	330273	01.3059	25.72	340030	02.0173	21.06	340127	01.3339	17.51	350053	01.0118	11.88

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
350055	00.9999	13.76	360074	01.3337	18.00	360159	01.2116	19.84	370029	01.2602	13.51	370149	01.2900	15.69
350056	00.9564	13.88	360075	01.4441	21.40	360161	01.2549	13.69	370030	01.1832	16.49	370153	01.0658	14.06
350058	00.9230	12.18	360076	01.3645	18.64	360163	01.8032	20.26	370032	01.5887	16.17	370154	01.0434	14.12
350060	00.8587	08.80	360077	01.5831	19.38	360164	00.9634	15.60	370033	01.0599	12.34	370156	01.0577	17.29
350061	01.0645	15.31	360078	01.2491	19.90	360165	01.1732	17.81	370034	01.2337	14.36	370158	01.0253	12.09
350063	00.8843	.....	360079	01.8666	21.04	360166	01.1873	16.01	370035	01.6429	16.77	370159	01.3951	15.05
350064	00.8364	.....	360080	01.1462	15.68	360170	01.3808	16.53	370036	01.0721	10.54	370163	01.0022	14.57
360001	01.3790	17.65	360081	01.3761	19.70	360172	01.3455	17.89	370037	01.7160	18.63	370165	01.1291	11.97
360002	01.1925	17.82	360082	01.3254	23.27	360174	01.3284	18.44	370038	01.0052	11.68	370166	01.1323	15.55
360003	01.7561	22.14	360084	01.6045	20.53	360175	01.1937	20.19	370039	01.2616	13.93	370169	01.0593	11.91
360006	01.8372	20.93	360085	01.8333	21.47	360176	01.1290	15.34	370040	01.0977	15.04	370170	01.0046	.....
360007	01.0627	15.95	360086	01.4331	17.81	360177	01.2931	18.27	370041	00.9733	16.47	370171	01.0182	.....
360008	01.2396	17.78	360087	01.4291	18.51	360178	01.2433	17.16	370042	00.8835	13.98	370172	00.9229	.....
360009	01.4867	17.38	360088	01.3676	19.09	360179	01.3391	19.50	370043	00.9443	15.18	370173	01.1000	.....
360010	01.2461	17.09	360089	01.1769	17.84	360180	02.1577	23.00	370045	00.9900	09.83	370174	00.7547	.....
360011	01.3403	18.91	360090	01.2425	19.75	360184	00.4293	18.76	370046	00.9817	10.89	370176	01.2219	16.29
360012	01.3150	19.72	360091	01.2836	20.40	360185	01.2259	18.13	370047	01.3904	15.04	370177	00.9737	10.48
360013	01.1386	18.36	360092	01.1263	19.47	360186	01.1539	10.45	370048	01.2228	15.40	370178	01.0021	11.20
360014	01.2083	18.87	360093	01.1654	17.64	360187	01.4085	17.67	370049	01.3327	15.44	370179	00.7441	15.19
360016	01.6147	18.36	360094	01.3940	18.15	360188	00.9725	17.11	370051	00.9867	11.30	370180	00.9135	.....
360017	01.8633	21.51	360095	01.2581	19.83	360189	01.1592	16.98	370054	01.4696	16.32	370183	01.0309	10.35
360018	01.6285	19.87	360096	01.1266	17.46	360192	01.3663	21.31	370056	01.5245	18.44	370186	00.9921	13.32
360019	01.2657	21.76	360098	01.4265	18.26	360193	01.2971	16.98	370057	01.1165	15.27	370190	01.5486	26.42
360020	01.4424	20.72	360099	01.0479	19.53	360194	01.2855	17.89	370059	01.0974	17.49	370192	01.2229	16.30
360024	01.3762	17.75	360100	01.2888	18.00	360195	01.1587	19.33	370060	01.1260	13.90	370196	00.8240	.....
360025	01.3562	19.40	360101	01.3901	21.04	360197	01.1688	19.16	370063	01.1782	16.95	370197	00.9846	.....
360026	01.3485	16.21	360102	01.2869	19.19	360200	01.0276	15.62	370064	00.9593	10.71	370198	01.7997	.....
360027	01.4597	20.14	360103	01.3578	19.87	360203	01.2094	14.41	370065	00.9924	15.36	380001	01.2902	18.13
360028	01.4846	17.21	360106	01.1021	16.08	360204	01.2422	19.09	370071	01.0530	10.05	380002	01.2715	18.07
360029	01.1846	17.74	360107	01.2417	17.37	360210	01.2012	20.61	370072	00.8635	14.04	380003	01.2260	28.86
360030	01.2891	16.67	360108	01.0913	16.45	360211	01.2671	19.64	370076	01.2612	12.45	380004	01.7003	23.04
360031	01.2807	19.33	360109	01.1094	18.64	360212	01.3941	20.16	370078	01.7411	16.06	380005	01.2187	22.81
360032	01.0729	17.87	360112	01.8012	23.33	360213	01.2686	18.05	370079	00.9534	15.91	380006	01.2870	19.61
360034	01.3225	14.77	360113	01.3630	15.36	360218	01.3047	18.29	370080	00.9738	14.18	380007	01.6852	24.92
360035	01.6186	20.73	360114	01.1017	17.48	360230	01.5624	21.16	370082	00.9220	13.85	380008	01.0543	19.56
360036	01.3579	19.04	360115	01.2554	17.92	360231	01.1494	12.39	370083	00.9508	12.81	380009	01.8821	22.90
360037	02.0580	21.38	360116	01.0983	17.49	360234	01.3469	16.44	370084	01.0827	13.65	380010	01.0520	22.58
360038	01.5828	20.60	360118	01.3521	18.34	360236	01.2893	25.36	370085	00.8717	13.21	380011	01.0490	19.05
360039	01.3135	17.40	360121	01.2409	19.22	360239	01.3034	19.65	370086	01.1713	11.51	380013	01.3177	20.62
360040	01.3495	17.81	360123	01.2744	19.33	360241	00.4699	21.14	370089	01.2580	15.23	380014	01.6295	22.02
360041	01.3392	18.83	360125	01.0992	17.41	360242	01.8068	.....	370091	01.7259	19.16	380017	01.9390	25.87
360042	01.1862	18.02	360126	01.2179	20.75	360243	00.7287	14.26	370092	01.0247	14.09	380018	01.8034	20.94
360044	01.1205	15.83	360127	01.1844	17.85	360245	00.7295	15.21	370093	01.8539	17.71	380019	01.2880	21.45
360045	01.4762	20.73	360128	01.1314	15.05	360247	00.4164	.....	370094	01.5130	19.25	380020	01.5022	21.41
360046	01.1449	17.71	360129	00.9665	15.12	360248	01.7504	.....	370095	00.9994	11.75	380021	01.2890	21.57
360047	01.1368	14.51	360130	01.1237	15.93	370001	01.7845	20.06	370097	01.3708	17.38	380022	01.1715	22.57
360048	01.8279	21.60	360131	01.3442	18.99	370002	01.1524	13.71	370099	01.1771	14.07	380023	01.2243	18.43
360049	01.1856	19.60	360132	01.4255	18.28	370004	01.2310	16.67	370100	01.0076	14.49	380025	01.3449	25.35
360050	01.0987	12.40	360133	01.5948	18.70	370005	01.0032	14.07	370103	00.9320	16.27	380026	01.1604	19.09
360051	01.6396	23.55	360134	01.7247	20.07	370006	01.2654	15.48	370105	01.9777	18.43	380027	01.2943	22.82
360052	01.7665	18.65	360136	01.0811	16.90	370007	01.2216	14.36	370106	01.5469	18.37	380029	01.1592	18.33
360054	01.2934	16.53	360137	01.6532	19.95	370008	01.3784	17.77	370108	01.1298	11.81	380031	00.9808	22.48
360055	01.2577	19.64	360140	00.9788	16.21	370011	01.0524	12.91	370112	01.0696	14.65	380033	01.7744	24.22
360056	01.4280	20.89	360141	01.5661	23.32	370012	00.8733	09.87	370113	01.1887	15.11	380035	01.2910	21.53
360057	01.1603	15.46	360142	01.0197	16.62	370013	01.8435	19.24	370114	01.6464	15.79	380036	01.0585	20.79
360058	01.2702	17.56	360143	01.4294	19.90	370014	01.2842	19.35	370121	01.1723	16.84	380037	01.2761	20.52
360059	01.6935	21.65	360144	01.3319	19.89	370015	01.2181	17.16	370122	01.1283	12.45	380038	01.3383	25.28
360062	01.5157	20.52	360145	01.6848	18.18	370016	01.3747	16.52	370123	01.3288	17.25	380039	01.3184	21.50
360063	01.1355	18.29	360147	01.2300	16.40	370017	01.1872	11.23	370125	00.9809	12.01	380040	01.2643	21.08
360064	01.6110	21.73	360148	01.1746	17.80	370018	01.3459	18.25	370126	00.9821	12.07	380042	01.0847	17.33
360065	01.2978	18.23	360149	01.2144	18.68	370019	01.3577	14.79	370131	00.9568	15.71	380047	01.7005	21.15
360066	01.5064	18.92	360150	01.2765	20.02	370020	01.3041	11.86	370133	01.1458	11.04	380048	01.0727	15.35
360067	01.1473	13.46	360151	01.3441	17.15	370021	00.9234	10.38	370138	01.0828	15.12	380050	01.4632	18.30
360068	01.7403	21.49	360152	01.5138	19.73	370022	01.3220	17.34	370139	01.1101	11.70	380051	01.6000	20.79
360069	01.1413	17.25	360153	01.1322	13.86	370023	01.3350	16.03	370140	01.0074	11.92	380052	01.2194	17.97
360070	01.6991	16.22	360154	01.0127	13.29	370025	01.3416	16.09	370141	01.3413	15.22	380055	01.0479	25.16
360071	01.3655	14.35	360155	01.3655	20.38	370026	01.4980	16.66	370146	01.1663	11.23	380056	01.1095	16.82
360072	01.2294	17.52	360156	01.2889	18.45	370028	01.9096	20.31	370148	01.4901	27.04	380060	01.4546	22.68

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
380061	01.5010	21.24	390054	01.1925	16.20	390138	01.3274	17.99	390242	01.3211	18.77	400120	01.3210	09.45
380062	01.2271	18.32	390055	01.8803	26.53	390139	01.5292	23.00	390244	00.9008	12.10	400121	00.9061	06.57
380063	01.2398	18.55	390056	01.1583	16.53	390142	01.6012	28.56	390245	01.4283	21.37	400122	01.0071	07.20
380064	01.3645	18.24	390057	01.3181	19.58	390145	01.3627	20.30	390246	01.2381	17.91	400123	01.1923	08.39
380065	01.2612	22.48	390058	01.2736	18.64	390146	01.2696	16.85	390247	01.0888	20.42	400124	02.6899	11.00
380066	01.3314	20.01	390060	01.2044	16.88	390147	01.2520	20.55	390249	01.0117	12.79	410001	01.3885	21.15
380068	00.9929	21.71	390061	01.5126	20.08	390150	01.1850	20.98	390256	01.8065	24.05	410004	01.3542	21.95
380069	01.1237	19.35	390062	01.1873	16.43	390151	01.2236	19.88	390258	01.3894	20.71	410005	01.3893	22.97
380070	01.3856	25.32	390063	01.7711	20.19	390152	01.0833	17.35	390260	01.2324	23.05	410006	01.3047	21.58
380071	01.2895	20.13	390065	01.2445	19.95	390153	01.2347	22.04	390262	01.8663	18.17	410007	01.6895	21.22
380072	00.9525	16.03	390066	01.2979	19.58	390154	01.2149	17.37	390263	01.4746	19.75	410008	01.2641	20.03
380075	01.3760	19.99	390067	01.7841	19.97	390156	01.4353	20.56	390265	01.3029	19.06	410009	01.3206	23.53
380078	00.9840	18.28	390068	01.3034	19.04	390157	01.3790	18.98	390266	01.2200	16.95	410010	01.0628	26.80
380081	01.1300	18.28	390069	01.3386	20.08	390158	01.5582	19.47	390267	01.3089	19.01	410011	01.2360	23.92
380082	01.3109	21.55	390070	01.3343	19.37	390160	01.2930	19.68	390268	01.3484	21.17	410012	01.8346	21.15
380083	01.2950	21.90	390071	01.0930	15.04	390161	01.1318	13.75	390270	01.3595	17.08	410013	01.2926	24.44
380084	01.2579	21.98	390072	01.0866	15.49	390162	01.5617	21.02	390272	00.4562	.....	420002	01.3852	21.83
380087	01.0848	12.91	390073	01.6243	19.82	390163	01.2249	16.11	390277	00.5292	23.14	420004	01.8530	18.30
380088	01.0227	18.65	390074	01.2608	16.62	390164	02.1585	22.59	390278	00.6728	16.94	420005	01.1718	15.14
380089	01.3275	23.92	390075	01.3632	17.48	390166	01.1125	18.97	390279	01.0386	14.40	420006	01.1714	17.68
380090	01.2856	25.49	390076	01.4253	21.97	390167	01.3655	21.84	400001	01.2646	09.39	420007	01.5056	17.78
380091	01.3021	24.95	390078	01.0805	18.92	390168	01.2845	18.12	400002	01.6156	10.99	420009	01.2431	17.01
390001	01.4101	21.89	390079	01.7802	17.91	390169	01.2814	18.85	400003	01.3181	08.34	420010	01.2029	15.22
390002	01.2997	19.71	390080	01.3128	18.40	390170	01.8882	21.93	400004	01.1998	08.16	420011	01.1862	15.88
390003	01.2251	17.48	390081	01.3443	21.33	390173	01.2026	17.81	400005	01.0804	06.50	420014	01.0521	15.49
390004	01.3957	17.68	390083	01.2260	17.49	390174	01.6821	28.75	400006	01.2047	07.62	420015	01.3602	17.27
390005	01.0449	16.56	390084	01.1848	15.92	390176	01.1634	18.54	400007	01.1616	07.13	420016	00.9967	14.27
390006	01.7963	18.43	390086	01.1623	17.91	390178	01.3125	19.14	400009	01.0382	07.64	420018	01.8076	19.64
390007	01.2165	20.24	390088	01.3418	21.04	390179	01.3565	21.31	400010	00.9135	10.07	420019	01.1909	14.81
390008	01.1475	16.70	390090	01.7964	20.56	390180	01.4771	23.13	400011	01.0608	07.81	420020	01.2623	17.58
390009	01.6945	19.72	390091	01.1404	18.52	390181	01.0478	19.10	400012	01.1906	07.69	420023	01.4452	19.27
390010	01.2666	16.99	390093	01.1546	15.95	390183	01.1759	18.03	400013	01.2834	08.06	420026	01.8876	18.73
390011	01.2805	18.32	390095	01.2041	15.21	390184	01.1047	18.24	400014	01.3803	08.68	420027	01.3581	17.34
390012	01.2209	19.43	390096	01.5027	17.87	390185	01.2232	17.20	400015	01.3729	.....	420030	01.2949	17.49
390013	01.2405	18.14	390097	01.2959	22.07	390189	01.1429	19.19	400016	01.3717	11.37	420031	00.9613	12.23
390015	01.1529	13.06	390100	01.6655	20.58	390191	01.2270	16.80	400017	01.2069	06.56	420033	01.2721	19.24
390016	01.2456	17.76	390101	01.2042	17.62	390192	01.1586	15.64	400018	01.2977	09.29	420036	01.4355	18.46
390017	01.2175	15.86	390102	01.3763	19.60	390193	01.2088	17.26	400019	01.7668	09.58	420037	01.1963	21.60
390018	01.3160	19.26	390103	01.1383	18.62	390194	01.1410	18.95	400021	01.4606	09.43	420038	01.3331	15.74
390019	01.1409	16.01	390104	01.0956	14.75	390195	01.8448	22.62	400022	01.3456	11.18	420039	01.1544	16.21
390022	01.3648	20.49	390106	01.0527	15.96	390196	01.3776	.....	400024	01.0267	07.45	420042	01.1022	14.56
390023	01.2385	18.03	390107	01.3456	19.43	390197	01.3002	17.67	400026	00.9852	06.04	420043	01.2299	18.79
390024	01.0879	23.53	390108	01.3676	19.21	390198	01.2119	15.83	400027	01.1410	08.07	420048	01.2492	13.44
390025	00.6397	15.37	390109	01.2783	14.91	390199	01.3245	15.86	400028	01.0099	07.98	420049	01.1743	16.46
390026	01.3006	21.98	390110	01.6319	19.36	390200	01.0981	17.18	400029	01.0884	10.05	420051	01.6278	17.99
390027	01.8620	28.88	390111	01.8454	29.97	390201	01.2808	20.12	400031	01.2349	09.50	420053	01.1996	16.08
390028	01.8946	19.73	390112	01.2860	13.72	390203	01.3856	22.12	400032	01.2495	08.99	420054	01.2953	17.01
390029	01.9719	18.87	390113	01.2274	17.00	390204	01.3041	20.57	400044	01.1780	09.84	420055	01.0131	15.72
390030	01.2422	18.37	390114	01.2178	21.25	390206	01.3925	19.09	400048	01.1548	08.23	420056	01.0853	13.21
390031	01.1866	18.45	390115	01.3792	23.95	390209	01.0699	16.37	400061	01.6558	14.42	420057	01.1687	14.71
390032	01.2567	19.11	390116	01.2709	23.74	390211	01.2499	18.17	400079	01.2819	10.43	420059	00.9796	15.11
390035	01.2478	17.14	390117	01.1848	16.64	390213	01.1615	19.15	400087	01.4420	10.90	420061	01.1681	17.58
390036	01.4518	19.18	390118	01.1802	16.48	390215	01.2938	24.51	400094	01.0401	06.88	420062	01.4640	15.61
390037	01.3834	19.24	390119	01.3516	18.05	390217	01.2323	20.29	400098	01.3576	08.48	420064	01.1124	14.50
390039	01.1357	16.31	390121	01.3576	19.61	390219	01.3267	19.86	400102	01.1698	04.27	420065	01.3464	18.10
390040	00.9663	16.73	390122	01.1007	18.49	390220	01.2025	18.22	400103	01.4518	09.30	420066	00.9577	16.65
390041	01.2908	18.92	390123	01.3805	20.31	390222	01.2859	20.89	400104	01.3442	09.05	420067	01.2622	18.10
390042	01.5647	21.41	390125	01.2001	15.48	390223	01.5318	22.49	400105	01.2514	08.85	420068	01.4309	17.58
390043	01.1558	18.18	390126	01.2793	19.94	390224	00.9047	15.35	400106	01.2522	08.61	420069	01.0556	18.03
390044	01.6721	19.24	390127	01.2446	21.39	390225	01.1782	17.76	400109	01.4903	09.61	420070	01.2279	16.89
390045	01.8045	17.60	390128	01.2398	19.93	390226	01.7896	23.48	400110	01.0649	08.99	420071	01.3120	18.25
390046	01.5550	20.26	390130	01.1635	16.56	390228	01.2819	19.19	400111	01.1917	08.80	420072	00.9800	11.63
390047	01.9134	30.25	390131	01.3311	16.73	390231	01.4331	24.08	400112	01.1131	08.91	420073	01.3017	20.68
390048	01.1814	18.12	390132	01.2825	22.21	390233	01.3151	18.31	400113	01.2139	08.29	420074	01.0054	13.73
390049	01.6700	21.29	390133	01.8226	22.97	390235	01.5371	23.51	400114	01.0730	08.19	420075	00.9408	13.75
390050	02.1813	22.47	390135	01.2353	21.67	390236	01.1865	16.40	400115	01.0700	08.58	420078	01.8491	21.18
390051	02.1743	25.65	390136	01.1261	15.10	390237	01.6160	19.08	400117	01.1921	09.36	420079	01.5774	19.07
390052	01.1794	15.47	390137	01.5138	16.40	390238	01.4870	18.78	400118	01.2634	10.06	420080	01.3760	24.17

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
420082	01.5220	18.32	440011	01.3887	17.79	440135	01.2276	19.84	450039	01.4508	17.93	450150	00.9615	10.86
420083	01.2939	19.79	440012	01.6038	18.49	440137	01.0953	13.42	450040	01.5337	17.64	450151	01.1421	15.82
420085	01.4964	17.31	440014	00.9585	14.66	440141	01.0489	16.14	450042	01.7796	17.20	450152	01.2733	16.88
420086	01.4475	18.16	440015	01.7375	15.39	440142	01.0746	12.75	450044	01.5602	20.09	450153	01.5917	18.67
420087	01.6840	18.21	440016	01.0127	12.66	440143	01.0957	17.21	450046	01.4559	12.99	450154	01.1522	14.43
420088	01.1409	16.23	440017	01.7209	19.76	440144	01.2961	17.79	450047	01.1070	11.09	450155	01.0382	24.42
420089	01.2826	21.79	440018	01.3665	16.68	440145	00.9607	13.88	450050	00.9968	11.53	450157	01.1365	15.32
420091	01.2793	16.06	440019	01.6964	20.11	440147	01.5847	16.28	450051	01.6355	19.77	450160	00.9535	15.51
420093	01.0268	.....	440020	01.2407	15.60	440148	01.1655	16.26	450052	01.0576	13.42	450162	01.2604	21.24
430004	01.1554	16.77	440023	01.1507	14.25	440149	01.1555	14.35	450053	01.0823	14.15	450163	01.0682	16.72
430005	01.3595	15.32	440024	01.3297	17.96	440150	01.3246	18.41	450054	01.6306	21.89	450164	01.2194	14.62
430007	01.0638	13.91	440025	01.2064	13.85	440151	01.3017	17.69	450055	01.0921	12.18	450165	01.0931	13.25
430008	01.1481	16.06	440029	01.3155	17.57	440152	01.8871	18.01	450056	01.6523	16.13	450166	00.9365	10.68
430010	01.1348	14.54	440030	01.2445	13.96	440153	01.2219	16.01	450058	01.6081	16.97	450169	00.7896	12.56
430011	01.2481	15.59	440031	01.0365	13.97	440156	01.5838	22.45	450059	01.3520	13.67	450170	00.9586	11.25
430012	01.3134	16.94	440032	01.0487	14.25	440157	01.0574	15.33	450063	00.9136	12.64	450176	01.3488	14.31
430013	01.2626	16.44	440033	01.1447	11.81	440159	01.3462	13.80	450064	01.4496	15.32	450177	01.2792	13.51
430014	01.3447	18.19	440034	01.5652	19.30	440161	01.9004	19.94	450065	01.1111	19.22	450178	00.9692	13.80
430015	01.1468	16.06	440035	01.2851	17.56	440166	01.6175	18.67	450068	01.8913	24.40	450181	01.0425	19.19
430016	01.8285	18.86	440039	01.7990	18.40	440168	01.0818	16.29	450072	01.2252	19.03	450184	01.5030	23.29
430018	00.9273	14.23	440040	01.0268	14.47	440173	01.6639	17.92	450073	01.2014	18.74	450185	01.0475	10.84
430022	00.9234	11.69	440041	01.0192	12.50	440174	01.0421	15.12	450076	01.6720	.....	450187	01.2512	19.67
430023	00.9009	11.59	440046	01.2308	14.28	440175	01.1542	17.31	450078	00.9841	09.74	450188	01.0367	14.02
430024	01.0343	14.51	440047	00.9274	16.03	440176	01.4262	19.42	450079	01.4681	20.51	450191	01.0301	19.15
430027	01.7770	18.58	440048	01.8485	16.82	440178	01.2426	22.63	450080	01.2200	17.44	450192	01.2312	17.99
430028	01.0635	15.50	440049	01.6623	17.56	440180	01.2421	16.19	450081	01.0655	15.61	450193	02.0166	22.67
430029	01.0237	15.69	440050	01.3806	16.99	440181	01.0545	10.98	450082	01.0038	13.31	450194	01.2934	20.99
430031	00.9251	12.23	440051	00.9613	14.08	440182	00.9998	16.20	450083	01.7323	19.48	450196	01.4438	17.07
430033	00.9805	13.99	440052	01.1465	15.14	440183	01.5912	20.71	450085	01.0847	12.24	450200	01.4043	14.95
430034	01.0590	12.76	440053	01.3823	17.37	440184	01.3803	19.32	450087	01.4908	17.64	450201	01.0004	17.33
430036	01.0975	12.56	440054	01.1902	13.52	440185	01.2481	18.83	450090	01.2450	13.44	450203	01.2382	18.28
430037	00.8770	14.57	440056	01.1204	14.40	440186	01.0953	17.87	450092	01.2228	12.47	450209	01.5951	18.25
430038	00.9865	11.26	440057	01.0459	12.35	440187	01.2081	15.76	450094	01.3052	.....	450210	01.1066	13.17
430040	01.0299	13.59	440058	01.2301	15.98	440189	01.5755	18.56	450096	01.4605	16.91	450211	01.3831	16.37
430041	00.9403	14.87	440059	01.3550	13.94	440192	01.2296	16.54	450097	01.4472	18.03	450213	01.6843	16.75
430043	01.1676	12.87	440060	01.2762	16.56	440193	01.2803	17.93	450098	01.1799	16.58	450214	01.3531	19.24
430044	00.8239	16.48	440061	01.2361	17.43	440194	01.2787	22.50	450099	01.2415	17.53	450217	01.0704	11.12
430047	01.0575	14.80	440063	01.6979	18.02	440197	01.3863	19.25	450101	01.4681	16.40	450219	01.1743	12.93
430048	01.2187	17.49	440064	01.1639	17.44	440200	01.1095	16.93	450102	01.7052	17.78	450221	01.2410	19.52
430049	00.8976	13.24	440065	01.2574	19.20	440203	00.9488	14.18	450104	01.1807	14.62	450222	01.5738	17.18
430051	00.9900	16.00	440067	01.2538	17.02	440205	01.1295	14.78	450107	01.6561	19.78	450224	01.3931	21.57
430054	01.0254	13.60	440068	01.2810	17.51	440206	01.0269	17.93	450108	00.9943	13.51	450229	01.6431	15.88
430056	00.8484	13.33	440070	01.0737	15.47	440210	00.8638	.....	450109	00.9201	14.10	450231	01.6402	17.02
430057	00.8887	13.52	440071	01.3827	15.29	440211	00.8634	.....	450110	01.3519	18.61	450234	01.0158	11.70
430060	00.9648	09.05	440072	01.4283	17.03	450002	01.5007	16.67	450111	01.2674	19.21	450235	01.0278	13.81
430064	01.1062	13.30	440073	01.3083	18.15	450004	01.1706	13.46	450112	01.3283	14.83	450236	01.1414	12.89
430066	00.9328	12.75	440078	01.0126	12.13	450005	01.2847	14.90	450113	01.2951	16.69	450237	01.5569	16.22
430073	01.0259	15.30	440081	01.1637	14.99	450007	01.2371	18.19	450118	01.5992	18.24	450239	01.0932	16.23
430076	00.9397	11.72	440082	02.0438	21.84	450008	01.3035	15.35	450119	01.4448	19.05	450241	00.9370	17.05
430077	01.6490	17.05	440083	01.1524	12.07	450010	01.3484	15.69	450121	01.5409	18.89	450243	00.9835	11.45
430079	00.9894	13.32	440084	01.1534	13.82	450011	01.5105	16.02	450123	01.1160	18.35	450249	00.9517	10.86
430081	00.8564	.....	440091	01.6220	18.42	450014	01.0623	15.48	450124	01.7023	18.45	450250	00.9991	15.66
430082	00.9185	.....	440100	01.0732	14.88	450015	01.6551	16.86	450126	01.4337	17.01	450253	01.1681	12.65
430083	00.7926	.....	440102	01.1389	13.79	450016	01.5914	18.01	450128	01.2114	13.18	450258	01.0492	12.74
430084	00.8631	.....	440103	01.2114	17.04	450018	01.4744	20.02	450130	01.4736	18.04	450264	00.8597	15.18
430085	00.8586	.....	440104	01.6329	18.95	450020	00.9726	16.92	450131	01.2712	20.21	450269	01.0555	15.78
430087	00.7737	10.24	440105	01.5362	15.40	450021	01.8369	20.79	450132	01.6805	17.53	450270	01.2103	11.06
430089	00.8702	.....	440109	01.1650	13.89	450023	01.4090	17.41	450133	01.6198	14.09	450271	01.2446	15.37
430090	01.6368	.....	440110	01.0533	16.25	450024	01.3806	17.30	450135	01.6577	19.58	450272	01.3032	15.86
430091	01.2774	.....	440111	01.3627	20.00	450025	01.4884	16.75	450137	01.5282	21.67	450276	01.0699	12.98
440001	01.1359	14.55	440114	01.0912	14.77	450028	01.5646	18.21	450140	00.9498	11.63	450278	00.9644	12.52
440002	01.6162	17.64	440115	01.0532	15.54	450029	01.5963	15.23	450143	00.9918	12.21	450280	01.5125	18.38
440003	01.2559	17.39	440120	01.5957	18.89	450031	01.4996	18.63	450144	01.0331	12.01	450283	01.0389	12.79
440006	01.4841	18.92	440125	01.5453	18.50	450032	01.3522	13.79	450145	00.8532	14.34	450288	01.1750	15.16
440007	01.0194	10.84	440130	01.1768	14.86	450033	01.6513	17.18	450146	01.0084	23.62	450289	01.4006	17.39
440008	00.9915	14.52	440131	01.1562	14.49	450034	01.6287	18.76	450147	01.3928	16.89	450292	01.1576	19.69
440009	01.2565	14.35	440132	01.1233	13.67	450035	01.4187	19.20	450148	01.2800	19.65	450293	00.9323	12.72
440010	00.9659	12.64	440133	01.5603	19.98	450037	01.6096	18.97	450149	01.5185	19.99	450296	01.4152	19.20

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450299	01.4072	17.64	450508	01.3603	17.56	450666	01.3312	17.90	450795	01.1350	11.54	470023	01.2895	20.23
450303	01.0154	09.91	450514	01.1700	21.10	450668	01.5943	20.06	450796	01.1114	18.43	470024	01.1727	19.52
450306	01.3057	13.64	450517	00.9399	10.56	450669	01.4186	18.58	450797	00.6077	20.39	490001	01.1946	22.18
450307	00.8801	14.50	450518	01.5820	18.69	450670	01.3482	19.53	450798	00.8050	13.86	490002	01.1337	13.48
450309	01.0743	11.89	450523	01.5399	20.21	450672	01.6957	15.51	450801	01.4763	15.51	490003	00.6057	17.48
450315	01.0586	19.19	450530	01.2367	14.42	450673	01.0679	13.71	450802	01.3938	21.70	490004	01.2252	17.71
450320	01.2414	18.72	450534	00.9886	15.40	450674	01.2022	19.92	450803	00.9037	14.23	490005	01.5926	15.95
450321	00.9614	13.82	450535	01.2414	21.39	450675	01.4594	18.09	450804	01.7378	18.83	490006	01.1499	14.40
450322	00.6639	17.10	450537	01.3383	20.33	450677	01.3331	18.92	450807	00.8978	09.72	490007	02.0606	17.85
450324	01.6384	16.95	450539	01.4022	16.04	450678	01.4407	20.79	450808	01.2265	20.55	490009	01.9210	21.78
450327	01.0202	15.94	450544	01.2272	18.82	450683	01.3459	16.70	450809	01.6064	11.29	490010	01.1786	18.22
450330	01.1889	17.95	450545	01.2791	10.16	450684	01.2082	18.70	450810	00.9015	.....	490011	01.4566	17.62
450334	01.0427	12.16	450547	01.1421	14.03	450686	01.5023	14.59	450811	02.1718	.....	490012	01.2121	13.77
450337	01.1368	15.71	450551	01.0935	11.37	450688	01.3506	18.63	450812	01.4107	.....	490013	01.2228	16.47
450340	01.4648	13.10	450558	01.8402	18.19	450690	01.4263	17.85	450813	00.9625	.....	490014	01.5159	22.68
450341	01.0639	17.56	450561	01.6276	17.05	450694	01.1099	20.41	460001	01.7571	20.72	490015	01.4427	21.35
450346	01.5308	16.52	450563	01.2546	26.74	450696	01.8786	18.73	460003	01.6596	13.31	490017	01.3665	14.05
450347	01.1688	17.43	450565	01.2517	16.37	450697	01.5484	15.64	460004	01.7671	21.27	490018	01.3418	17.01
450348	01.0269	11.60	450570	01.0924	15.62	450698	00.9596	13.36	460005	01.6688	17.23	490019	01.2321	16.49
450351	01.2346	20.05	450571	01.4622	16.04	450700	01.0540	13.52	460006	01.3436	19.96	490020	01.2247	16.07
450352	01.2368	17.88	450573	01.0277	13.94	450702	01.5379	17.73	460007	01.4903	20.38	490021	01.3831	18.08
450353	01.2532	18.38	450574	00.9377	11.77	450703	01.5073	10.03	460008	01.4270	16.77	490022	01.4805	20.25
450355	01.1328	14.56	450575	01.0523	17.94	450704	01.3187	18.39	460009	01.8533	20.44	490023	01.2675	18.77
450358	02.0759	22.13	450578	00.9641	14.60	450705	00.8680	17.81	460010	02.0765	21.33	490024	01.8219	17.17
450362	01.0834	14.11	450580	01.1420	14.05	450706	01.3743	20.77	460011	01.4411	15.69	490027	01.1416	14.52
450369	01.0290	11.76	450583	01.0040	11.81	450709	01.2530	18.28	460013	01.4727	18.36	490030	01.1740	11.44
450370	01.1810	09.42	450584	01.1354	12.88	450711	01.6382	26.65	460014	01.3196	16.46	490031	01.1290	13.85
450371	01.3147	12.05	450586	01.0874	12.54	450712	00.7382	11.77	460015	01.2639	19.92	490032	01.7735	19.88
450372	01.2321	21.35	450587	01.2170	17.55	450713	01.5244	20.73	460016	00.9270	16.64	490033	01.1962	17.39
450373	01.1823	18.71	450591	01.2310	17.41	450715	01.4406	18.46	460017	01.4957	17.56	490035	01.0236	07.57
450374	00.9860	12.21	450596	01.3163	18.97	450716	01.3997	19.33	460018	00.9784	16.10	490037	01.1888	14.88
450378	01.0667	21.41	450597	01.0268	13.68	450717	01.3232	22.11	460019	01.1733	16.25	490038	01.2703	14.98
450379	01.5480	20.94	450603	00.7219	14.21	450718	01.2781	17.49	460020	00.9866	17.05	490040	01.4415	21.70
450381	01.0325	13.87	450604	01.3496	14.64	450723	01.4075	18.75	460021	01.3876	20.12	490041	01.2682	16.01
450388	01.8150	15.21	450605	01.2166	16.69	450724	01.3091	18.28	460022	00.9246	18.19	490042	01.3042	16.38
450389	01.2994	14.80	450609	00.8719	12.26	450725	01.0043	19.85	460023	01.2160	20.38	490043	01.3803	19.82
450393	01.3200	11.86	450610	01.4645	18.06	450727	01.0811	16.87	460025	00.8007	20.08	490044	01.3514	17.17
450395	01.0597	16.54	450614	01.0531	12.79	450728	00.8837	07.46	460026	01.0552	17.32	490045	01.2228	19.98
450399	00.9655	11.15	450615	01.1326	12.36	450730	01.2614	21.03	460027	00.8883	20.44	490046	01.5215	17.89
450400	01.1933	13.63	450617	01.3492	19.91	450733	01.6021	15.09	460029	01.0308	17.00	490047	01.1505	16.65
450403	01.3197	19.63	450620	01.1109	12.27	450735	00.9833	13.78	460030	01.1423	16.55	490048	01.5931	17.94
450411	00.9264	13.09	450623	01.2008	18.97	450742	01.2757	20.17	460032	01.0597	19.39	490050	01.4805	20.95
450417	01.2299	15.17	450626	01.0125	16.38	450743	01.4277	17.77	460033	00.9172	17.19	490052	01.6347	16.26
450418	01.4876	21.54	450628	00.9890	17.19	450746	01.0074	14.71	460035	00.9441	12.43	490053	01.3129	15.12
450419	01.2224	20.33	450630	01.6105	19.66	450747	01.3436	17.58	460036	01.0266	20.56	490054	01.0153	15.45
450422	00.8593	25.07	450631	01.6903	13.59	450749	00.9909	14.54	460037	00.9572	18.38	490057	01.5481	18.87
450423	01.4768	22.62	450632	01.0398	11.43	450750	01.0134	12.54	460039	01.0909	23.84	490059	01.6281	19.99
450424	01.2921	16.39	450633	01.5622	12.13	450751	01.3102	19.24	460041	01.3319	20.51	490060	01.1169	18.19
450429	01.0852	12.33	450634	01.7215	23.78	450754	00.9192	13.20	460042	01.4554	14.11	490063	01.7955	23.28
450431	01.6026	18.46	450638	01.5546	25.20	450755	01.1391	17.26	460043	00.9829	21.91	490066	01.2905	20.77
450438	01.2764	13.12	450639	01.4457	23.25	450757	00.9009	13.23	460044	01.1823	20.42	490067	01.2750	16.60
450446	00.7248	15.16	450641	01.0829	17.56	450758	01.9407	19.90	460046	01.9599	17.71	490069	01.4205	14.56
450447	01.3800	17.19	450643	01.2095	15.10	450760	01.2017	18.55	460047	01.7392	19.91	490071	01.4266	17.71
450451	01.1660	15.20	450644	01.5151	18.19	450761	01.0213	11.87	460049	02.0096	19.97	490073	01.4914	22.82
450457	01.7808	18.77	450646	01.5429	20.32	450763	00.9975	17.58	460050	01.3199	19.33	490074	01.4074	17.39
450460	01.0157	12.81	450647	01.9096	20.84	450766	02.0886	21.59	460051	01.2227	13.29	490075	01.4408	18.79
450462	01.7455	16.26	450648	00.9381	12.65	450769	00.8730	11.77	470001	01.2556	20.25	490077	01.2421	19.03
450464	01.0024	12.89	450649	00.9870	14.53	450770	01.0213	15.47	470003	01.8563	19.92	490079	01.3591	15.64
450465	01.3399	15.41	450651	01.7586	19.35	450771	01.7967	16.42	470004	01.1211	15.87	490084	01.2514	16.34
450467	00.9850	17.15	450652	00.8798	14.52	450774	01.6108	20.17	470005	01.2357	21.12	490085	01.2505	15.31
450469	01.4058	19.15	450653	01.1829	16.63	450775	01.3187	41.14	470006	01.2066	17.97	490088	01.1793	16.50
450473	01.0205	14.61	450654	00.9596	10.61	450776	00.9848	10.16	470008	01.2542	17.91	490089	01.1277	16.41
450475	01.1210	13.56	450656	01.4624	18.35	450777	00.9836	16.72	470010	01.1439	19.71	490090	01.1658	16.31
450484	01.4951	19.64	450658	00.9767	12.49	450779	01.2890	22.50	470011	01.1753	20.37	490091	01.2201	19.80
450488	01.3238	17.72	450659	01.5010	21.19	450780	01.6074	16.21	470012	01.2872	18.28	490092	01.2429	15.01
450489	01.0359	13.90	450661	01.1973	21.13	450785	00.9638	18.31	470015	01.1589	19.34	490093	01.3892	15.78
450497	01.1631	14.82	450662	01.6029	16.56	450788	01.5172	16.06	470018	01.2011	20.89	490094	01.1193	16.40
450498	00.9818	12.66	450665	00.9015	13.23	450794	01.4587	16.66	470020	00.9543	16.28	490095	01.4744	17.31

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
490097	01.2401	15.08	500055	01.1102	22.34	510030	01.0609	15.76	520045	01.6699	18.60	520144	01.0176	16.36
490098	01.2771	13.23	500057	01.2911	17.73	510031	01.4605	16.76	520047	00.9944	17.42	520145	00.9470	16.85
490099	00.9704	16.66	500058	01.5107	21.64	510033	01.3690	16.31	520048	01.4624	18.04	520146	01.0694	15.76
490100	01.5522	18.36	500059	01.0873	22.72	510035	01.3504	18.82	520049	01.9631	19.12	520148	01.1567	16.73
490101	01.2218	23.44	500060	01.4688	23.67	510036	01.0367	12.45	520051	01.8043	15.77	520149	00.9333	12.72
490104	00.8484	21.14	500061	01.0054	20.43	510038	01.1249	14.36	520053	01.1564	15.87	520151	01.0435	16.58
490105	00.5902	30.04	500062	01.1028	19.07	510039	01.3356	15.69	520054	01.0412	19.44	520152	01.1259	17.97
490106	00.8464	21.07	500064	01.6849	24.85	510043	00.9429	14.14	520057	01.1771	18.10	520153	00.9590	14.95
490107	01.3556	22.35	500065	01.2258	20.87	510046	01.3048	17.25	520058	01.1268	20.40	520154	01.1615	18.07
490108	00.9494	19.84	500068	01.0622	18.61	510047	01.2964	18.83	520059	01.3542	19.76	520156	01.1721	19.10
490109	00.9167	20.38	500069	01.1722	19.05	510048	01.1292	18.03	520060	01.4225	17.08	520157	01.0942	15.30
490110	01.3455	15.76	500071	01.3952	20.91	510050	01.6030	16.38	520062	01.3120	17.21	520159	00.9415	19.52
490111	01.2018	15.96	500072	01.2463	24.49	510053	01.0108	14.63	520063	01.2008	19.95	520160	01.7765	19.26
490112	01.6587	19.70	500073	01.0093	18.07	510055	01.2826	22.31	520064	01.5671	20.70	520161	01.0404	17.96
490113	01.2995	22.73	500074	01.0970	18.46	510058	01.2636	17.21	520066	01.5292	19.84	520170	01.2542	21.23
490114	01.1138	15.90	500077	01.3337	22.82	510059	02.4160	15.98	520068	00.9889	18.59	520171	00.9070	14.86
490115	01.1964	16.62	500079	01.3407	21.42	510060	01.0691	15.10	520069	01.1861	18.14	520173	01.1585	19.58
490116	01.1887	16.24	500080	00.8399	13.35	510061	01.0314	13.59	520070	01.5734	17.44	520177	01.6324	19.38
490117	01.1938	10.57	500084	01.2536	21.57	510062	01.2784	17.15	520071	01.2420	18.44	520178	01.1172	16.98
490118	01.7261	20.56	500085	01.0506	18.46	510066	01.1573	13.24	520074	01.0372	16.81	520187	00.2986	.....
490119	01.4062	17.02	500086	01.3459	21.47	510067	01.1882	16.39	520075	01.4602	18.96	530002	01.2253	21.84
490120	01.3763	17.93	500088	01.3211	23.74	510068	01.1347	15.46	520076	01.1673	16.36	530003	00.8835	14.70
490122	01.4040	22.46	500089	01.0985	16.55	510070	01.3876	15.31	520077	00.9774	14.51	530004	00.9574	14.14
490123	01.1230	15.45	500090	00.9182	14.04	510071	01.3472	15.76	520078	01.6274	18.24	530005	01.0465	14.61
490124	01.1222	15.81	500092	00.9896	19.29	510072	01.0515	13.30	520082	01.2908	17.60	530006	01.1196	20.18
490126	01.4055	16.47	500094	00.9176	17.96	510077	01.1535	15.63	520083	01.7091	21.38	530007	01.1095	14.87
490127	01.0287	16.05	500096	01.0080	18.80	510080	01.2046	16.32	520084	01.0866	17.62	530008	01.2996	13.79
490129	01.0607	23.65	500097	01.1573	19.47	510081	01.1996	13.50	520087	01.7203	18.61	530009	00.9922	18.12
490130	01.2347	15.72	500098	01.0903	14.96	510082	01.2149	13.50	520088	01.2637	18.97	530010	01.2158	18.65
490132	01.0026	.....	500101	00.9755	19.08	510084	00.9664	12.91	520089	01.4904	20.44	530011	01.1586	17.22
500001	01.4111	21.97	500102	00.9657	20.71	510085	01.3282	17.98	520090	01.2889	17.51	530012	01.5605	18.08
500002	01.4114	21.64	500104	01.1802	22.63	510086	01.1820	13.59	520091	01.3199	19.68	530014	01.4027	19.27
500003	01.4119	24.03	500106	00.9602	19.85	520002	01.2720	18.86	520092	01.1556	16.83	530015	01.2690	19.02
500005	01.8033	21.24	500107	01.2297	16.68	520003	01.0633	15.78	520094	00.7870	19.19	530016	01.2999	17.19
500007	01.3070	23.24	500108	01.7227	20.48	520004	01.1862	18.46	520095	01.3843	19.38	530017	00.8709	15.80
500008	01.9296	25.09	500110	01.1878	20.80	520006	01.0492	20.59	520096	01.3993	18.60	530018	01.0972	16.71
500011	01.3263	22.98	500118	01.1808	22.66	520007	01.0781	14.87	520097	01.2965	19.05	530019	01.0350	11.26
500012	01.5418	22.34	500119	01.3050	21.86	520008	01.6437	22.59	520098	01.8306	20.96	530022	01.1106	17.60
500014	01.5358	22.94	500122	01.2794	22.76	520009	01.6467	18.07	520100	01.2826	18.08	530023	00.8946	19.55
500015	01.4382	22.41	500123	00.8946	16.33	520010	01.2081	20.01	520101	01.0947	17.84	530025	01.2196	21.13
500016	01.5256	24.13	500124	01.3290	23.72	520011	01.2493	19.33	520102	01.1586	09.85	530026	01.1680	21.55
500019	01.3845	22.33	500125	01.1430	15.98	520013	01.3654	19.29	520103	01.3295	18.39	530027	00.9464	32.50
500021	01.4791	18.72	500129	01.7655	23.34	520014	01.1483	16.47	520107	01.3313	18.69	530029	01.0347	14.86
500023	01.2237	21.48	500132	00.9488	17.26	520015	01.1656	17.59	520109	00.9890	18.27	530031	00.8621	18.36
500024	01.6929	25.17	500134	00.5730	17.47	520016	01.1202	12.53	520110	01.2401	18.59	530032	01.0887	20.69
500025	01.8624	25.48	500138	06.3328	.....	520017	01.1603	18.49	520111	00.9933	17.44			
500026	01.4298	24.13	500139	01.4946	20.62	520018	01.1396	17.51	520112	01.1309	17.67			
500027	01.6083	25.89	500141	01.3409	22.31	520019	01.3102	19.27	520113	01.2560	19.14			
500028	01.1018	17.84	500143	00.5980	15.77	520021	01.3145	19.71	520114	01.1466	15.59			
500029	00.9778	17.28	500146	01.1943	17.52	520024	01.1085	13.94	520115	01.2493	17.57			
500030	01.4685	23.64	510001	01.8062	18.22	520025	01.1185	16.59	520116	01.2386	19.24			
500031	01.3076	22.42	510002	01.3476	17.07	520026	01.0738	18.95	520117	01.0212	17.30			
500033	01.3568	20.98	510005	00.9799	14.53	520027	01.2317	20.05	520118	00.8786	12.73			
500036	01.3789	20.93	510006	01.2876	17.40	520028	01.4023	20.17	520120	00.8917	16.22			
500037	01.1777	20.35	510007	01.5321	19.91	520029	00.9252	17.80	520121	00.9810	16.30			
500039	01.3856	22.97	510008	01.2363	16.30	520030	01.6637	20.22	520122	01.0140	16.52			
500041	01.2891	24.11	510012	01.0194	15.51	520031	01.1181	15.70	520123	01.0617	17.45			
500042	01.4113	21.93	510013	01.1629	16.85	520032	01.1645	16.87	520124	01.0920	16.50			
500043	01.0687	19.43	510015	01.0179	13.81	520033	01.2055	17.42	520130	01.0256	14.89			
500044	01.9209	23.59	510018	01.1368	14.07	520034	01.0827	17.18	520131	01.0431	17.56			
500045	01.0517	22.10	510020	01.0662	12.22	520035	01.3492	17.15	520132	01.1994	17.01			
500048	00.9665	19.03	510022	01.8733	19.32	520037	01.6601	19.33	520134	01.0791	16.37			
500049	01.5515	22.21	510023	01.2461	15.36	520038	01.3396	17.69	520135	00.9793	24.20			
500050	01.3757	20.94	510024	01.4907	18.04	520039	01.0178	18.09	520136	01.5411	19.31			
500051	01.6476	24.14	510026	01.0369	13.05	520040	01.4388	19.39	520138	01.8963	19.63			
500052	01.2052	.....	510027	00.9899	16.49	520041	01.1377	15.58	520139	01.2903	20.36			
500053	01.3356	21.20	510028	01.1102	14.91	520042	01.1067	17.13	520140	01.6170	19.69			
500054	01.8578	22.51	510029	01.2666	16.61	520044	01.4365	17.04	520142	00.8928	16.53			

Note: Case mix indexes do not include discharges from PPS-exempt units.
Case mix indexes include cases received in HCFA Central Office through December 1996.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (Constituent counties)	Wage index	GAF
0040 Abilene, TX	0.8081	0.8642
Taylor, TX		
0060 Aguadilla, PR	0.4772	0.6025
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	1.0011	1.0008
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8098	0.8655
Dougherty, GA		
Lee, GA		
0160 [2] Albany-Schenectady-Troy, NY	0.8640	0.9047
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.8813	0.9171
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8598	0.9017
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	1.0219	1.0149
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9398	0.9584
Blair, PA		
0320 Amarillo, TX	0.8483	0.8935
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.3088	1.2024
Anchorage, AK		
0440 Ann Arbor, MI	1.1127	1.0759
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8731	0.9113
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8899	0.9232
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4915	0.6148
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9016	0.9315
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.8746	0.9123
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 [1] Atlanta, GA	1.0024	1.0016
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
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	1.0442	1.0301
Atlantic, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA–SC	0.9309	0.9521
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 [1] Austin-San Marcos, TX	0.8158	0.8699
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 [2] Bakersfield, CA	0.9976	0.9984
Kern, CA		
0720 [1] Baltimore, MD	0.9760	0.9835
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 [2] Bangor, ME	0.8538	0.8974
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.5644	1.3586
Barnstable, MA		
0760 Baton Rouge, LA	0.8940	0.9261
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8660	0.9062
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1475	1.0988
Whatcom, WA		
0870 [2] Benton Harbor, MI	0.8988	0.9295
Berrien, MI		
0875 [1] Bergen-Passaic, NJ	1.1845	1.1229
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.9220	0.9459
Yellowstone, MT		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
0920 Biloxi-Gulfport-Pascagoula, MS	0.8291	0.8796
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.9103	0.9377
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9150	0.9410
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8015	0.8594
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.9041	0.9333
Monroe, IN		
1040 Bloomington-Normal, IL	0.8926	0.9251
McLean, IL		
1080 Boise City, ID	0.9267	0.9492
Ada, ID		
Canyon, ID		
1123 [1 2] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (Massachusetts Hospitals)	1.0917	1.0619
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (New Hampshire Hospitals)	1.0885	1.0598
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	1.0122	1.0083
Boulder, CO		
1145 Brazoria, TX	0.8895	0.9229
Brazoria, TX		
1150 Bremerton, WA	1.1148	1.0773
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8291	0.8796
Cameron, TX		
1260 Bryan-College Station, TX	0.7962	0.8555

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Brazos, TX		
1280 [1] Buffalo-Niagara Falls, NY	0.9592	0.9719
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9612	0.9733
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4445	0.5739
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.8895	0.9229
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.9227	0.9464
Natrona, WY		
1360 Cedar Rapids, IA	0.8888	0.9224
Linn, IA		
1400 Champaign-Urbana, IL	0.8844	0.9193
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8931	0.9255
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9042	0.9334
Kanawha, WV		
Putnam, WV		
1520 [1] Charlotte-Gastonia-Rock Hill, NC–SC	0.9568	0.9702
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Stanly, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	1.0359	1.0244
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN–GA	0.9123	0.9391
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.9354	0.9553
Laramie, WY		
1600 [1] Chicago, IL	1.0507	1.0344
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0231	1.0158
Butte, CA		
1640 [1] Cincinnati, OH–KY–IN	0.9465	0.9630
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	0.8204	0.8732
Christian, KY		
Montgomery, TN		
1680 [1] Cleveland-Lorain-Elyria, OH	0.9970	0.9979
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9469	0.9633
El Paso, CO		
1740 Columbia, MO	0.9678	0.9778
Boone, MO		
1760 Columbia, SC	0.9368	0.9563
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.8573	0.8999
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 [1] Columbus, OH	0.9929	0.9951
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8112	0.8665
Nueces, TX		
San Patricio, TX		
1900 [2] Cumberland, MD–WV (Maryland Hospitals)	0.8627	0.9038
Allegany, MD		
Mineral, WV		
1900 Cumberland, MD–WV (West Virginia Hospital)	0.8407	0.8880
Allegany, MD		
Mineral, WV		
1920 [1] Dallas, TX	0.9149	0.9409
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.9121	0.9389
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA–IL	0.8496	0.8944
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9670	0.9773
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.9211	0.9453
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8302	0.8804
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.8140	0.8686
Macon, IL		
2080 [1] Denver, CO	1.0532	1.0361
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8576	0.9001
Dallas, IA		
Polk, IA		
Warren, IA		
2160 [1] Detroit, MI	1.0601	1.0408
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7827	0.8455
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9441	0.9614
Kent, DE		
2200 Dubuque, IA	0.8292	0.8796
Dubuque, IA		
2240 Duluth-Superior, MN–WI	1.0133	1.0091
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	0.9860	0.9904
Dutchess, NY		
2290 Eau Claire, WI	0.8755	0.9130
Chippewa, WI		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Eau Claire, WI		
2320 El Paso, TX	0.8978	0.9288
El Paso, TX		
2330 Elkhart-Goshen, IN	0.9168	0.9422
Elkhart, IN		
2335 [2] Elmira, NY	0.8640	0.9047
Chemung, NY		
2340 Enid, OK	0.8050	0.8620
Garfield, OK		
2360 Erie, PA	0.9343	0.9545
Erie, PA		
2400 Eugene-Springfield, OR	1.1288	1.0865
Lane, OR		
2440 Evansville-Henderson, IN–KY	0.8505	0.8950
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND–MN (North Dakota Hospitals)	0.7905	0.8513
Clay, MN		
Cass, ND		
2520 [2] Fargo-Moorhead, ND–MN (Minnesota Hospitals)	0.8665	0.9065
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.8460	0.8918
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.8686	0.9080
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ–UT	0.9602	0.9726
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1106	1.0745
Genesee, MI		
2650 Florence, AL	0.7740	0.8391
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8368	0.8851
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0383	1.0261
Larimer, CO		
2680 [1] Ft. Lauderdale, FL	1.0534	1.0363
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9017	0.9316
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	0.9847	0.9895
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR–OK	0.7687	0.8352
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 [2] Fort Walton Beach, FL	0.8947	0.9266
Okaloosa, FL		
2760 Fort Wayne, IN	0.8896	0.9230
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 [1] Forth Worth-Arlington, TX	0.9192	0.9439
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0491	1.0334
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8854	0.9200
Etowah, AL		
2900 Gainesville, FL	0.9542	0.9684
Alachua, FL		
2920 Galveston-Texas City, TX	0.9549	0.9689
Galveston, TX		
2960 Gary, IN	0.9542	0.9684
Lake, IN		
Porter, IN		
2975 [2] Glens Falls, NY	0.8640	0.9047
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8523	0.8963
Wayne, NC		
2985 Grand Forks, ND–MN	0.8996	0.9301
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.9110	0.9382
Mesa, CO		
3000 [1] Grand Rapids-Muskegon-Holland, MI	1.0018	1.0012
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9362	0.9559
Cascade, MT		
3060 Greeley, CO	0.9856	0.9901
Weld, CO		
3080 Green Bay, WI	0.9323	0.9531
Brown, WI		
3120 [1] Greensboro-Winston-Salem-High Point, NC	0.9418	0.9598
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9034	0.9328
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.9318	0.9528
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	1.0268	1.0183
Washington, MD		
3200 Hamilton-Middletown, OH	0.9292	0.9510
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	0.9572	0.9705
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 [1 2] Hartford, CT	1.2175	1.1443
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 [2] Hattiesburg, MS	0.7359	0.8106
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.8687	0.9081
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1628	1.1088
Honolulu, HI		
3350 Houma, LA	0.8266	0.8777
Lafourche, LA		
Terrebonne, LA		
3360 [1] Houston, TX	1.0017	1.0012
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV–KY–OH	0.9728	0.9813
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8428	0.8895
Limestone, AL		
Madison, AL		
3480 [1] Indianapolis, IN	0.9901	0.9932
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9561	0.9697
Johnson, IA		
3520 Jackson, MI	0.9302	0.9517
Jackson, MI		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
3560 Jackson, MS	0.8279	0.8787
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8632	0.9042
Madison, TN		
Chester, TN		
3600 [1 2] Jacksonville, FL	0.8947	0.9266
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 [2] Jacksonville, NC	0.8162	0.8702
Onslow, NC		
3610 [2] Jamestown, NY	0.8640	0.9047
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.9128	0.9394
Rock, WI		
3640 Jersey City, NJ	1.1372	1.0920
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8847	0.9195
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8671	0.9070
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7643	0.8319
Craighead, AR		
3710 Joplin, MO	0.7933	0.8534
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.2009	1.1336
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9175	0.9427
Kankakee, IL		
3760 [1] Kansas City, KS–MO	0.9672	0.9774
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9206	0.9449
Kenosha, WI		
3810 Killeen-Temple, TX	1.0180	1.0123
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8569	0.8996
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9350	0.9550
Howard, IN		
Tipton, IN		
3870 La Crosse, WI–MN	0.8989	0.9296
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8363	0.8848
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8984	0.9293
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7738	0.8389
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8947	0.9266
Polk, FL		
4000 Lancaster, PA	0.9646	0.9756
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0130	1.0089
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 [2] Laredo, TX	0.7404	0.8140
Webb, TX		
4100 Las Cruces, NM	0.9045	0.9336
Dona Ana, NM		
4120 [1] Las Vegas, NV–AZ	1.1349	1.0905
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8728	0.9110
Douglas, KS		
4200 Lawton, OK	0.8770	0.9140
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9226	0.9463
Androscoggin, ME		
4280 Lexington, KY	0.8579	0.9004
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8885	0.9222
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9082	0.9362
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8598	0.9017
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8583	0.9007
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 [1] Los Angeles-Long Beach, CA	1.2124	1.1410
Los Angeles, CA		
4520 Louisville, KY–IN	0.9212	0.9453
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8460	0.8918
Lubbock, TX		
4640 Lynchburg, VA	0.8680	0.9076
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.9109	0.9381
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0103	1.0070
Dane, WI		
4800 Mansfield, OH	0.8606	0.9023
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4360	0.5664
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8541	0.8976
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0109	1.0075
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9289	0.9507
Brevard, Fl		
4920 [1] Memphis, TN–AR–MS	0.8423	0.8891
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0304	1.0207
Merced, CA		
5000 [1] Miami, FL	0.9427	0.9604
Dade, FL		
5015 [1] Middlesex-Somerset-Hunterdon, NJ	1.0871	1.0589

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1] Milwaukee-Waukesha, WI	0.9470	0.9634
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1] Minneapolis-St. Paul, MN–WI	1.0956	1.0645
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7942	0.8540
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0406	1.0276
Stanislaus, CA		
5190 [1] Monmouth-Ocean, NJ	1.1285	1.0863
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8288	0.8793
Ouachita, LA		
5240 Montgomery, AL	0.7919	0.8523
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9493	0.9650
Delaware, IN		
5330 [2] Myrtle Beach, SC	0.8110	0.8664
Horry, SC		
5345 Naples, FL	1.0205	1.0140
Collier, FL		
5360 [1] Nashville, TN	0.9336	0.9540
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.3123	1.2046
Nassau, NY		
Suffolk, NY		
5483 [1 2] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2175	1.1443
Fairfield, CT		
New Haven, CT		
5523 [2] New London-Norwich, CT	1.2175	1.1443
New London, CT		
5560 [1] New Orleans, LA	0.9397	0.9583
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1] New York, NY	1.4537	1.2920
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 [1] Newark, NJ	1.0899	1.0607
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.1226	1.0824
Orange, NY		
Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA–NC	0.8235	0.8755
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 [1] Oakland, CA	1.5309	1.3386
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9229	0.9465
Marion, FL		
5800 Odessa-Midland, TX	0.7773	0.8415
Ector, TX		
Midland, TX		
5880 [1] Oklahoma City, OK	0.8764	0.9136
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.1605	1.1073
Thurston, WA		
5920 Omaha, NE–IA	0.9938	0.9958
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1153	1.0776
Orange, CA		
5960 [1] Orlando, FL	0.9933	0.9954
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 [2] Owensboro, KY	0.7902	0.8511
Daviess, KY		
6015 [2] Panama City, FL	0.8947	0.9266
Bay, FL		
6020 Parkersburg-Marietta, WV–OH (West Virginia Hospitals)	0.8118	0.8669
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV–OH (Ohio Hospitals)	0.8576	0.9001
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.8947	0.9266
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8157	0.8698
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA–NJ	1.1427	1.0957
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	0.9759	0.9834
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.8003	0.8585
Jefferson, AR		
6280 [1] Pittsburgh, PA	0.9896	0.9929
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 [2] Pittsfield, MA	1.0917	1.0619
Berkshire, MA		
6340 Pocatello, ID	0.8760	0.9133

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Bannock, ID		
6360 Ponce, PR	0.4740	0.5998
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9537	0.9681
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 [1] Portland-Vancouver, OR–WA	1.1274	1.0856
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 [1] Providence-Warwick-Pawtucket, RI	1.0888	1.0600
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9910	0.9938
Utah, UT		
6560 Pueblo, CO	0.8785	0.9151
Pueblo, CO		
6580 Punta Gorda, FL	0.8994	0.9300
Charlotte, FL		
6600 Racine, WI	0.9207	0.9450
Racine, WI		
6640 [1] Raleigh-Durham-Chapel Hill, NC	0.9909	0.9938
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8277	0.8785
Pennington, SD		
6680 Reading, PA	0.9282	0.9503
Berks, PA		
6690 Redding, CA	1.2017	1.1341
Shasta, CA		
6720 Reno, NV	1.0169	1.0115
Washoe, NV		
6740 [2] Richland-Kennewick-Pasco, WA	1.0577	1.0392
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9257	0.9485
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 [1] Riverside-San Bernardino, CA	1.0151	1.0103
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8581	0.9005
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.1797	1.1198
Olmsted, MN		
6840 [1] Rochester, NY	0.9678	0.9778
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8703	0.9093
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8214	0.8740
Edgecombe, NC		
Nash, NC		
6920 [1] Sacramento, CA	1.1952	1.1299
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9567	0.9701
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9667	0.9771
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.9972	0.9981
Andrew, MO		
Buchanan, MO		
7040 [1] St. Louis, MO–IL	0.9063	0.9348
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9987	0.9991
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.5270	1.3363
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	0.9458	0.9626
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7512	0.8221
Tom Green, TX		
7240 [1] San Antonio, TX	0.7744	0.8394
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 [1] San Diego, CA	1.2388	1.1579
San Diego, CA		
7360 [1] San Francisco, CA	1.3621	1.2357
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 [1] San Jose, CA	1.3783	1.2457
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4521	0.5806
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	1.0825	1.0558
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1233	1.0829
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.4099	1.2652
Santa Cruz, CA		
7490 Santa Fe, NM	0.9525	0.9672

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3167	1.2073
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9567	0.9701
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.8776	0.9145
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 [2] Scranton-Wilkes-Barre-Hazleton, PA	0.8615	0.9029
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 [1] Seattle-Bellevue-Everett, WA	1.1634	1.1092
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.8948	0.9267
Mercer, PA		
7620 [2] Sheboygan, WI	0.8557	0.8988
Sheboygan, WI		
7640 Sherman-Denison, TX	0.8229	0.8750
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9436	0.9610
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA–NE	0.8530	0.8968
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.8988	0.9295
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9939	0.9958
St. Joseph, IN		
7840 Spokane, WA	1.1020	1.0688
Spokane, WA		
7880 Springfield, IL	0.8793	0.9157
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8151	0.8694
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	1.0917	1.0619
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9528	0.9674
Centre, PA		
8080 [2] Steubenville-Weirton, OH–WV (Ohio Hospitals)	0.8576	0.9001
Jefferson, OH		
Brooke, WV		
Hancock, WV		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
8080 Steubenville-Weirton, OH–WV (West Virginia Hospitals)	0.8476	0.8929
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1157	1.0779
San Joaquin, CA		
8140 Sumter, SC	0.8195	0.8726
Sumter, SC		
8160 Syracuse, NY	0.9410	0.9592
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 [2] Tacoma, WA	1.0577	1.0392
Pierce, WA		
8240 [2] Tallahassee, FL	0.8947	0.9266
Gadsden, FL		
Leon, FL		
8280 [1] Tampa-St. Petersburg-Clearwater, FL	0.9179	0.9430
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.9063	0.9348
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.7538	0.8240
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0132	1.0090
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9894	0.9927
Shawnee, KS		
8480 Trenton, NJ	1.0399	1.0272
Mercer, NJ		
8520 Tucson, AZ	0.9104	0.9377
Pima, AZ		
8560 Tulsa, OK	0.8520	0.8961
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.7706	0.8366
Tuscaloosa, AL		
8640 Tyler, TX	0.8792	0.9156
Smith, TX		
8680 [2] Utica-Rome, NY	0.8640	0.9047
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3458	1.2255
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.0764	1.0517
Ventura, CA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
8750 Victoria, TX	0.8451	0.8911
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0460	1.0313
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0168	1.0115
Tulare, CA		
8800 Waco, TX	0.8027	0.8603
McLennan, TX		
8840 [1] Washington, DC–MD–VA–WV	1.0863	1.0583
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	0.8402	0.8876
Black Hawk, IA		
8940 Wausau, WI	0.9814	0.9872
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL	1.0288	1.0196
Palm Beach, FL		
9000 [2] Wheeling, WV–OH (West Virginia Hospitals)	0.7938	0.8537
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2] Wheeling, WV–OH (Ohio Hospitals)	0.8576	0.9001
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.8990	0.9297
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7864	0.8483
Archer, TX		
Wichita, TX		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
9140 [2] Williamsport, PA	0.8615	0.9029
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.1968	1.1309
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9427	0.9604
New Hanover, NC		
Brunswick, NC		
9260 [2] Yakima, WA	1.0577	1.0392
Yakima, WA		
9270 Yolo, CA	1.0702	1.0476
Yolo, CA		
9280 York, PA	0.9509	0.9661
York, PA		
9320 Youngstown-Warren, OH	0.9897	0.9929
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0957	1.0646
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	1.0143	1.0098
Yuma, AZ		

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1999.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7385	0.8125
Alaska	1.2534	1.1673
Arizona	0.8082	0.8643
Arkansas	0.7274	0.8042
California	0.9976	0.9984
Colorado	0.8454	0.8914
Connecticut	1.2175	1.1443
Delaware	0.8590	0.9012
Florida	0.8947	0.9266
Georgia	0.7933	0.8534
Hawaii	1.1011	1.0682
Idaho	0.8548	0.8981
Illinois	0.7985	0.8572
Indiana	0.8429	0.8896
Iowa	0.7846	0.8469
Kansas	0.7334	0.8087
Kentucky	0.7902	0.8511
Louisiana	0.7517	0.8225
Maine	0.8538	0.8974
Maryland	0.8627	0.9038
Massachusetts	1.0917	1.0619
Michigan	0.8988	0.9295
Minnesota	0.8665	0.9065
Mississippi	0.7359	0.8106
Missouri	0.7510	0.8219
Montana	0.8645	0.9051
Nebraska	0.7683	0.8349
Nevada	0.9267	0.9492

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
New Hampshire	1.0324	1.0221
New Jersey [1]	.....	.....
New Mexico	0.7927	0.8529
New York	0.8640	0.9047
North Carolina	0.8162	0.8702
North Dakota	0.7471	0.8190
Ohio	0.8576	0.9001
Oklahoma	0.7207	0.7991
Oregon	0.9957	0.9971
Pennsylvania	0.8615	0.9029
Puerto Rico	0.4083	0.5415
Rhode Island [1]	.....	.....
South Carolina	0.8110	0.8664
South Dakota	0.7564	0.8260
Tennessee	0.7483	0.8199
Texas	0.7404	0.8140
Utah	0.8851	0.9198
Vermont	0.9489	0.9647
Virginia	0.7890	0.8502
Washington	1.0577	1.0392
West Virginia	0.7938	0.8537
Wisconsin	0.8557	0.8988
Wyoming	0.8763	0.9135

All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8081	0.8642
Albany, GA	0.7933	0.8534
Albuquerque, NM	0.8813	0.9171
Alexandria, LA	0.8598	0.9017
Allentown-Bethlehem-Easton, PA	1.0219	1.0149
Amarillo, TX	0.8483	0.8935
Anchorage, AK	1.3088	1.2024
Asheville, NC	0.9016	0.9315
Atlanta, GA	1.0024	1.0016
Augusta-Aiken, GA–SC	0.9309	0.9521
Baltimore, MD	0.9760	0.9835
Barnstable-Yarmouth, MA	1.4646	1.2986
Baton Rouge, LA	0.8940	0.9261
Benton Harbor, MI	0.8988	0.9295
Bergen-Passaic, NJ	1.1845	1.1229
Billings, MT	0.9220	0.9459
Binghamton, NY	0.8989	0.9296
Birmingham, AL	0.9150	0.9410
Bismarck, ND	0.7838	0.8464
Boise City, ID	0.9267	0.9492
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.0885	1.0598
Brazoria, TX	0.8895	0.9229
Bryan-College Station, TX	0.7962	0.8555
Buffalo-Niagara Falls, NY	0.9592	0.9719
Burlington, VT	0.9612	0.9733
Caguas, PR	0.4445	0.5739

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Canton-Massillon, OH	0.8895	0.9229
Casper, WY	0.9227	0.9464
Champaign-Urbana, IL	0.8844	0.9193
Charleston-North Charleston, SC	0.8931	0.9255
Charleston, WV	0.8819	0.9175
Charlotte-Gastonia-Rock Hill, NC–SC	0.9568	0.9702
Charlottesville, VA	0.9803	0.9865
Chattanooga, TN–GA	0.8885	0.9222
Chicago, IL	1.0507	1.0344
Cincinnati, OH–KY–IN	0.9465	0.9630
Clarksville-Hopkinsville, TN–KY	0.8204	0.8732
Cleveland-Lorain-Elyria, OH	0.9970	0.9979
Columbia, MO	0.9331	0.9537
Columbus, GA–AL	0.8573	0.8999
Columbus, OH	0.9929	0.9951
Corpus Christi, TX	0.8112	0.8665
Dallas, TX	0.9149	0.9409
Danville, VA	0.8779	0.9147
Davenport-Moline-Rock Island, IA–IL	0.8496	0.8944
Dayton-Springfield, OH	0.9670	0.9773
Denver, CO	1.0532	1.0361
Des Moines, IA	0.8576	0.9001
Duluth-Superior, MN–WI	1.0133	1.0091
Dutchess County, NY	0.9860	0.9904
Elkhart-Goshen, IN	0.9168	0.9422
Eugene-Springfield, OR	1.1141	1.0768
Evansville-Henderson, IN–KY	0.8505	0.8950
Fargo-Moorhead, ND–MN (Minnesota Hospital)	0.8665	0.9065
Fargo-Moorhead, ND–MN (South Dakota Hospital)	0.7905	0.8513
Fayetteville, NC	0.8460	0.8918
Flagstaff, AZ–UT	0.9602	0.9726
Flint, MI	1.1106	1.0745
Fort Collins-Loveland, CO	1.0383	1.0261
Ft. Lauderdale, FL	1.0534	1.0363
Fort Pierce-Port St. Lucie, FL	0.9847	0.9895
Fort Smith, AR–OK	0.7582	0.8273
Fort Walton Beach, FL	0.8694	0.9086
Forth Worth-Arlington, TX	0.9192	0.9439
Gadsden, AL	0.8854	0.9200
Gainesville, FL	0.9542	0.9684
Goldsboro, NC	0.8366	0.8850
Grand Forks, ND–MN	0.8996	0.9301
Grand Junction, CO	0.9110	0.9382
Grand Rapids-Muskegon-Holland, MI	0.9908	0.9937
Great Falls, MT	0.9362	0.9559
Greeley, CO	0.9663	0.9768
Green Bay, WI	0.9323	0.9531
Greenville, NC	0.8844	0.9193
Greenville-Spartanburg-Anderson, SC	0.9318	0.9528
Harrisburg-Lebanon-Carlisle, PA	0.9572	0.9705

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Hartford, CT	1.1152	1.0775
Hattiesburg, MS	0.7359	0.8106
Hickory-Morganton-Lenoir, NC	0.8687	0.9081
Honolulu, HI	1.1628	1.1088
Houston, TX	1.0017	1.0012
Huntington-Ashland, WV–KY–OH	0.9353	0.9552
Huntsville, AL	0.8269	0.8780
Indianapolis, IN	0.9901	0.9932
Iowa City, IA	0.9441	0.9614
Jackson, MS	0.8279	0.8787
Jackson, TN	0.8632	0.9042
Jacksonville, FL	0.8915	0.9244
Johnson City-Kingsport-Bristol, TN–VA	0.8847	0.9195
Jonesboro, AR	0.7643	0.8319
Joplin, MO	0.7710	0.8369
Kalamazoo-Battlecreek, MI	1.1713	1.1144
Kansas City, KS–MO	0.9672	0.9774
Knoxville, TN	0.8569	0.8996
Lafayette, LA	0.8363	0.8848
Lansing-East Lansing, MI	1.0025	1.0017
Las Cruces, NM	0.9045	0.9336
Las Vegas, NV–AZ	1.1349	1.0905
Lexington, KY	0.8579	0.9004
Lima, OH	0.8715	0.9101
Lincoln, NE	0.8900	0.9233
Little Rock-North Little Rock, AR	0.8598	0.9017
Los Angeles-Long Beach, CA	1.2124	1.1410
Louisville, KY–IN	0.9212	0.9453
Macon, GA	0.8886	0.9223
Madison, WI	1.0103	1.0070
Mansfield, OH	0.8606	0.9023
Memphis, TN–AR–MS	0.8423	0.8891
Merced, CA	1.0304	1.0207
Milwaukee-Waukesha, WI	0.9289	0.9507
Minneapolis-St. Paul, MN–WI	1.0956	1.0645
Modesto, CA	1.0406	1.0276
Monroe, LA	0.8148	0.8691
Montgomery, AL	0.7919	0.8523
Myrtle Beach, SC	0.8162	0.8702
Nashville, TN	0.9336	0.9540
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2175	1.1443
New London-Norwich, CT	1.1738	1.1160
New Orleans, LA	0.9397	0.9583
New York, NY	1.4537	1.2920
Newark, NJ	1.0899	1.0607
Newburgh, NY–PA	1.1356	1.0910
Oakland, CA	1.5309	1.3386
Odessa-Midland, TX	0.7773	0.8415
Oklahoma City, OK	0.8764	0.9136
Omaha, NE–IA	0.9938	0.9958
Orange County, CA	1.1153	1.0776
Orlando, FL	0.9933	0.9954
Peoria-Pekin, IL	0.8157	0.8698
Philadelphia, PA–NJ	1.1427	1.0957

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Pittsburgh, PA	0.9740	0.9821
Pocatello, ID (Idaho Hospital)	0.8760	0.9133
Pocatello, ID (Wyoming Hospitals)	0.8763	0.9135
Portland, ME	0.9537	0.9681
Portland-Vancouver, OR–WA	1.1274	1.0856
Provo-Orem, UT	0.9910	0.9938
Raleigh-Durham-Chapel Hill, NC	0.9909	0.9938
Rapid City, SD	0.8277	0.8785
Reno, NV	1.0169	1.0115
Rochester, MN	1.1797	1.1198
Rockford, IL	0.8703	0.9093
Sacramento, CA	1.1952	1.1299
Saginaw-Bay City-Midland, MI	0.9567	0.9701
St. Cloud, MN	0.9667	0.9771
St. Louis, MO–IL	0.9063	0.9348
Salt Lake City-Ogden, UT	0.9458	0.9626
San Diego, CA	1.2388	1.1579
Santa Fe, NM	0.9414	0.9595
Santa Rosa, CA	1.3003	1.1970
Seattle-Bellevue-Everett, WA	1.1634	1.1092
Sharon, PA	0.8835	0.9187
Sherman-Denison, TX	0.8061	0.8628
Sioux City, IA–NE	0.8530	0.8968
Sioux Falls, SD	0.8885	0.9222
South Bend, IN	0.9939	0.9958
Spokane, WA	1.0819	1.0554
Springfield, IL	0.8793	0.9157
Springfield, MO	0.8151	0.8694
State College, PA	0.8845	0.9194
Syracuse, NY	0.9410	0.9592
Tallahassee, FL	0.8566	0.8994
Tampa-St. Petersburg-Clearwater, FL	0.9179	0.9430
Texarkana, AR-Texarkana, TX	0.7538	0.8240
Topeka, KS	0.9667	0.9771
Tucson, AZ	0.9104	0.9377
Tulsa, OK	0.8418	0.8888
Tuscaloosa, AL	0.7706	0.8366
Tyler, TX	0.8792	0.9156
Vallejo-Fairfield-Napa, CA	1.3458	1.2255
Victoria, TX	0.8451	0.8911
Washington, DC–MD–VA–WV	1.0863	1.0583
Waterloo-Cedar Falls, IA	0.8402	0.8876
Wausau, WI	0.9501	0.9656
Wichita, KS	0.8853	0.9200
Wichita Falls, TX	0.7695	0.8357
Rural Alabama	0.7385	0.8125
Rural Illinois	0.7985	0.8572
Rural Louisiana	0.7517	0.8225
Rural Massachusetts	1.0481	1.0327
Rural Michigan	0.8988	0.9295
Rural Minnesota	0.8665	0.9065
Rural Missouri	0.7510	0.8219
Rural Nevada	0.8855	0.9201
Rural New Mexico	0.7927	0.8529
Rural Oregon	0.9957	0.9971

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Rural Washington	1.0577	1.0392
Rural Wyoming	0.8763	0.9135

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	16.4503
Aguadilla, PR	9.8326
Akron, OH	20.5582
Albany, GA	16.6839
Albany-Schenectady-Troy, NY	17.3615
Albuquerque, NM	18.1579
Alexandria, LA	17.7146
Allentown-Bethlehem-Easton, PA	21.0540
Altoona, PA	19.3623
Amarillo, TX	17.4756
Anchorage, AK	26.6324
Ann Arbor, MI	22.9259
Anniston, AL	17.9884
Appleton-Oshkosh-Neenah, WI	18.3354
Arecibo, PR	10.1277
Asheville, NC	18.5755
Athens, GA	18.0203
Atlanta, GA	20.6523
Atlantic-Cape May, NJ	23.3952
Augusta-Aiken, GA–SC	19.1799
Austin-San Marcos, TX	16.8088
Bakersfield, CA	18.4123
Baltimore, MD	20.1089
Bangor, ME	16.5207
Barnstable-Yarmouth, MA	32.2329
Baton Rouge, LA	18.4192
Beaumont-Port Arthur, TX	17.8430
Bellingham, WA	23.6418
Benton Harbor, MI	17.7241
Bergen-Passaic, NJ	25.1292
Billings, MT	18.9960
Biloxi-Gulfport-Pascagoula, MS	17.0828
Binghamton, NY	18.7554
Birmingham, AL	18.8514
Bismarck, ND	16.5132
Bloomington,IN	18.6271
Bloomington-Normal, IL	18.3900
Boise City, ID	19.0323
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	22.3344
Boulder-Longmont, CO	20.8550
Brazoria, TX	18.3273
Bremerton, WA	22.9686
Brownsville-Harlingen-San Benito, TX	17.0823
Bryan-College Station, TX	16.3918
Buffalo-Niagara Falls, NY	19.7621
Burlington, VT	19.7504
Caguas, PR	9.1371
Canton-Massillon, OH	18.3270
Casper, WY	18.0774
Cedar Rapids, IA	18.3134
Champaign-Urbana, IL	18.1242
Charleston-North Charleston, SC	18.4009
Charleston, WV	18.6306

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Charlotte-Gastonia-Rock Hill, NC–SC	19.7132
Charlottesville, VA	21.3425
Chattanooga, TN–GA	18.7967
Cheyenne, WY	19.2719
Chicago, IL	21.6476
Chico-Paradise, CA	21.0787
Cincinnati, OH–KY–IN	19.5020
Clarksville-Hopkinsville, TN–KY	16.6908
Cleveland-Lorain-Elyria, OH	20.5422
Colorado Springs, CO	19.5098
Columbia, MO	19.9392
Columbia, SC	19.3016
Columbus, GA–AL	17.6626
Columbus, OH	20.4569
Corpus Christi, TX	16.6221
Cumberland, MD–WV	17.3219
Dallas, TX	18.9048
Danville, VA	18.7936
Davenport-Moline-Rock Island, IA–IL	17.5045
Dayton-Springfield, OH	19.9239
Daytona Beach, FL	18.9775
Decatur, AL	17.1051
Decatur, IL	16.7703
Denver, CO	21.6957
Des Moines, IA	17.5941
Detroit, MI	21.8417
Dothan, AL	16.1254
Dover, DE	19.4527
Dubuque, IA	17.0843
Duluth-Superior, MN–WI	20.7877
Dutchess County, NY	21.5269
Eau Claire, WI	18.0385
El Paso, TX	18.4982
Elkhart-Goshen, IN	18.7060
Elmira, NY	17.5584
Enid, OK	16.5863
Erie, PA	19.2498
Eugene-Springfield, OR	23.2566
Evansville, Henderson, IN–KY	17.5235
Fargo-Moorhead, ND–MN	15.4103
Fayetteville, NC	17.4302
Fayetteville-Springdale-Rogers, AR	17.8965
Flagstaff, AZ–UT	19.7008
Flint, MI	22.8823
Florence, AL	15.9479
Florence, SC	17.2402
Fort Collins-Loveland, CO	21.3936
Fort Lauderdale, FL	20.3768
Fort Myers-Cape Coral, FL	18.5790
Fort Pierce-Port St. Lucie, FL	19.9753
Fort Smith, AR–OK	15.8375
Fort Walton Beach, FL	17.8995
Fort Wayne, IN	18.3283
Fort Worth-Arlington, TX	18.8266
Fresno, CA	21.6143
Gadsden, AL	18.2411
Gainesville, FL	19.6396
Galveston-Texas City, TX	19.6738
Gary, IN	19.5496
Glens Falls, NY	17.6404
Goldsboro, NC	17.5612
Grand Forks, ND–MN	18.4172
Grand Junction, CO	17.0997
Grand Rapids-Muskegon-Holland, MI	20.6411
Great Falls, MT	18.4336

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Greeley, CO	20.3075
Green Bay, WI	19.0230
Greensboro-Winston-Salem-High Point, NC	19.4045
Greenville, NC	18.6140
Greenville-Spartanburg-Anderson, SC	19.1991
Hagerstown, MD	21.1564
Hamilton-Middletown, OH	19.1458
Harrisburg-Lebanon-Carlisle, PA	19.7220
Hartford, CT	22.8114
Hattiesburg, MS	15.0868
Hickory-Morganton-Lenoir, NC	18.4430
Honolulu, HI	23.9579
Houma, LA	17.0314
Houston, TX	20.6380
Huntington-Ashland, WV–KY–OH	20.0441
Huntsville, AL	17.3657
Indianapolis, IN	20.3998
Iowa City, IA	19.6992
Jackson, MI	19.1645
Jackson, MS	17.0541
Jackson, TN	17.7852
Jacksonville, FL	18.3674
Jacksonville, NC	15.6996
Jamestown, NY	15.9060
Janesville-Beloit, WI	18.8060
Jersey City, NJ	23.4307
Johnson City-Kingsport-Bristol, TN–VA	18.2276
Johnstown, PA	17.8659
Jonesboro, AR	15.3904
Joplin, MO	16.3448
Kalamazoo-Battlecreek, MI	24.7428
Kankakee, IL	18.9037
Kansas City, KS–MO	19.9286
Kenosha, WI	18.9676
Killeen-Temple, TX	20.9746
Knoxville, TN	17.6557
Kokomo, IN	19.2639
La Crosse, WI–MN	18.5196
Lafayette, LA	17.1506
Lafayette, IN	18.3693
Lake Charles, LA	15.9437
Lakeland-Winter Haven, FL	18.5691
Lancaster, PA	19.8739
Lansing-East Lansing, MI	20.8707
Laredo, TX	15.2064
Las Cruces, NM	18.4298
Las Vegas, NV–AZ	23.3827
Lawrence, KS	17.9827
Lawton, OK	18.0698
Lewiston-Auburn, ME	19.0090
Lexington, KY	17.6767
Lima, OH	18.3062
Lincoln, NE	18.7127
Little Rock-North Little Rock, AR	17.6667
Longview-Marshall, TX	17.6848
Los Angeles-Long Beach, CA	24.9118
Louisville, KY–IN	18.9791
Lubbock, TX	17.4301
Lynchburg, VA	17.8831
Macon, GA	18.7672
Madison, WI	20.8155
Mansfield, OH	17.7321
Mayaguez, PR	8.9825
McAllen-Edinburg-Mission, TX	17.5983
Medford-Ashland, OR	20.8288
Melbourne-Titusville-Palm Bay, FL	19.1394

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Memphis, TN–AR–MS	17.3550
Merced, CA	20.8449
Miami, FL	20.7248
Middlesex-Somerset-Hunterdon, NJ	23.1938
Milwaukee-Waukesha, WI	19.5106
Minneapolis-St. Paul, MN–WI	22.5733
Mobile, AL	16.3627
Modesto, CA	21.4409
Monmouth-Ocean, NJ	23.2510
Monroe, LA	17.0762
Montgomery, AL	16.2493
Muncie, IN	19.5589
Myrtle Beach, SC	16.4379
Naples, FL	21.0253
Nashville, TN	19.2358
Nassau-Suffolk, NY	28.5558
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	24.7905
New London-Norwich, CT	24.1351
New Orleans, LA	19.3612
New York, NY	29.9516
Newark, NJ	24.1961
Newburgh, NY–PA	23.1287
Norfolk-Virginia Beach-Newport News, VA–NC	16.9674
Oakland, CA	31.0918
Ocala, FL	19.0159
Odessa-Midland, TX	16.0153
Oklahoma City, OK	18.0573
Olympia, WA	23.9108
Omaha, NE–IA	20.4749
Orange County, CA	23.1127
Orlando, FL	20.4664
Owensboro, KY	16.1460
Panama City, FL	17.6753
Parkersburg-Marietta, WV–OH	16.7267
Pensacola, FL	16.9466
Peoria-Pekin, IL	16.7415
Philadelphia, PA–NJ	23.5434
Phoenix-Mesa, AZ	20.1062
Pine Bluff, AR	16.4882
Pittsburgh, PA	20.3893
Pittsfield, MA	22.4781
Pocatello, ID	18.0491
Ponce, PR	9.7656
Portland, ME	19.6358
Portland-Vancouver, OR–WA	23.2280
Providence-Warwick, RI	22.4328
Provo-Orem, UT	20.4158
Pueblo, CO	18.1010
Punta Gorda, FL	18.5303
Racine, WI	18.9689
Raleigh-Durham-Chapel Hill, NC	20.4162
Rapid City, SD	17.0546
Reading, PA	19.1241
Redding, CA	24.7586
Reno, NV	20.9521
Richland-Kennewick-Pasco, WA	21.3732
Richmond-Petersburg, VA	19.0728
Riverside-San Bernardino, CA	21.3055
Roanoke, VA	17.6802
Rochester, MN	24.3054
Rochester, NY	19.9396
Rockford, IL	17.9308
Rocky Mount, NC	18.5969
Sacramento, CA	24.6188
Saginaw-Bay City-Midland, MI	19.7109
St. Cloud, MN	19.9167

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
St. Joseph, MO	20.5465
St. Louis, MO–IL	18.6721
Salem, OR	20.5776
Salinas, CA	31.4614
Salt Lake City-Ogden, UT	19.4515
San Angelo, TX	15.4776
San Antonio, TX	15.9548
San Diego, CA	25.4297
San Francisco, CA	28.9991
San Jose, CA	28.6758
San Juan-Bayamon, PR	9.3148
San Luis Obispo-Atascadero-Paso Robles, CA	22.3026
Santa Barbara-Santa Maria-Lompoc, CA	23.1439
Santa Cruz-Watsonville, CA	29.0487
Santa Fe, NM	19.6247
Santa Rosa, CA	28.2324
Sarasota-Bradenton, FL	19.7119
Savannah, GA	18.0808
Scranton-Wilkes Barre-Hazleton, PA	17.5663
Seattle-Bellevue-Everett, WA	23.9527
Sharon, PA	18.4366
Sheboygan, WI	17.0899
Sherman-Denison, TX	16.9538
Shreveport-Bossier City, LA	19.4408
Sioux City, IA–NE	17.5754
Sioux Falls, SD	18.5187
South Bend, IN	20.4772
Spokane, WA	22.7055
Springfield, IL	18.1176
Springfield, MO	16.7941
Springfield, MA	22.7477
State College, PA	19.6319
Steubenville-Weirton, OH–WV	17.4636
Stockton-Lodi, CA	22.9869
Sumter, SC	16.8850
Syracuse, NY	19.3881
Tacoma, WA	21.5661
Tallahassee, FL	17.5545
Tampa-St. Petersburg-Clearwater, FL	18.7444
Terre Haute, IN	18.6722
Texarkana, AR-Texarkana, TX	14.8193
Toledo, OH	20.8755
Topeka, KS	20.3862

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Trenton, NJ	21.4255
Tucson, AZ	18.7576
Tulsa, OK	17.5538
Tuscaloosa, AL	15.8762
Tyler, TX	18.1141
Utica-Rome, NY	17.2785
Vallejo-Fairfield-Napa, CA	27.9551
Ventura, CA	22.7487
Victoria, TX	17.4131
Vineland-Millville-Bridgeton, NJ	21.5511
Visalia-Tulare-Porterville, CA	20.9493
Waco, TX	16.5375
Washington, DC–MD–VA–WV	22.3812
Waterloo-Cedar Falls, IA	16.5347
Wausau, WI	20.2214
West Palm Beach-Boca Raton, FL	21.2686
Wheeling, OH–WV	15.8460
Wichita, KS	18.5231
Wichita Falls, TX	16.2020
Williamsport, PA	17.5305
Wilmington-Newark, DE–MD	24.6591
Wilmington, NC	19.4232
Yakima, WA	21.4371
Yolo, CA	22.0507
York, PA	19.5923
Youngstown-Warren, OH	20.3921
Yuba City, CA	22.5751
Yuma, AZ	20.8977

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	15.1489
Alaska	25.8250
Arizona	16.6528
Arkansas	14.9880
California	20.5534
Colorado	17.4187
Connecticut	25.0854
Delaware	17.6976
Florida	18.4340

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Georgia	16.3451
Hawaii	22.6872
Idaho	17.6124
Illinois	16.4317
Indiana	17.3659
Iowa	16.1658
Kansas	15.1110
Kentucky	16.2801
Louisiana	15.4622
Maine	17.5914
Maryland	17.7750
Massachusetts	22.4920
Michigan	18.5026
Minnesota	17.8522
Mississippi	15.1615
Missouri	15.4743
Montana	17.8114
Nebraska	15.8291
Nevada	19.0933
New Hampshire	21.2716
New Jersey [1]	.....
New Mexico	16.3322
New York	17.8012
North Carolina	16.8177
North Dakota	15.3932
Ohio	17.6689
Oklahoma	14.8488
Oregon	20.5099
Pennsylvania	17.7499
Puerto Rico	8.4134
Rhode Island [1]	.....
South Carolina	16.7085
South Dakota	15.5851
Tennessee	15.4168
Texas	15.2542
Utah	18.2372
Vermont	19.5500
Virginia	16.2563
Washington	21.7931
West Virginia	16.3543
Wisconsin	17.6308
Wyoming	18.0559

[1] All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—Reclass. hospitals	GAF—Reclass. hospitals
Aguadilla, PR	1.0534	1.0363	.....	.....
Arecibo, PR	1.0850	1.0575	.....	.....
Caguas, PR	0.9812	0.9871	0.9812	0.9871
Mayaguez, PR	0.9624	0.9741	.....	.....
Ponce, PR	1.0462	1.0314	.....	.....
San Juan-Bayamon, PR	0.9980	0.9986	.....	.....
Rural Puerto Rico	0.9014	0.9314	.....	.....

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0645	6.8	9.6
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.1009	7.5	10.1
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9573	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.3259	5.1	7.7
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.4845	2.7	3.6
6	01	SURG	CARPAL TUNNEL RELEASE	.7763	2.1	3.0
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.3911	6.8	10.1
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.2891	2.2	3.2
9	01	MED	SPINAL DISORDERS & INJURIES	1.2867	4.8	6.6
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2113	5.1	7.0
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8233	3.1	4.2
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9034	4.8	6.7
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7792	4.4	5.5
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.1973	4.9	6.4
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.7327	3.1	3.9
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0715	4.5	5.9
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6186	2.7	3.4
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9285	4.3	5.6
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6463	3.0	3.8
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.6134	7.9	10.5
21	01	MED	VIRAL MENINGITIS	1.4785	5.1	6.8
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8984	3.6	4.7
23	01	MED	NONTRAUMATIC STUPOR & COMA	.7776	3.2	4.3
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9579	3.8	5.1
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5905	2.7	3.4
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.6950	2.4	3.1
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3017	3.4	5.3
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.1699	4.3	6.0
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.6370	2.7	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3310	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8039	3.2	4.4
32	01	MED	CONCUSSION AGE >17 W/O CC	.5138	2.2	3.0
33	01	MED	*CONCUSSION AGE 0–17	.2080	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0067	4.1	5.5
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5915	2.7	3.6
36	02	SURG	RETINAL PROCEDURES	.6873	1.3	1.5
37	02	SURG	ORBITAL PROCEDURES	.9614	2.5	3.7
38	02	SURG	PRIMARY IRIS PROCEDURES	.4876	1.9	2.6
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5686	1.5	2.0
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.7937	2.1	3.2
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	.3369	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6034	1.6	2.1
43	02	MED	HYPHEMA	.4370	2.7	3.4
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6100	4.2	5.1
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6822	2.8	3.5
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7546	3.6	4.7
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4618	2.5	3.3
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2969	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7597	3.7	5.0
50	03	SURG	SIALOADENECTOMY	.8288	1.6	2.0
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.8590	1.8	2.8
52	03	SURG	CLEFT LIP & PALATE REPAIR	.9567	2.0	2.8
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1402	2.3	3.7
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4812	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.8886	2.0	3.0
56	03	SURG	RHINOPLASTY	.9008	2.1	2.8
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9381	2.6	3.7
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2732	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.6750	1.8	2.4
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	.2081	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1456	2.6	4.5
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2946	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3248	3.0	4.4
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2201	4.4	6.8
65	03	MED	DYSEQUILIBRIUM	.5173	2.4	3.0
66	03	MED	EPISTAXIS	.5418	2.6	3.3
67	03	MED	EPIGLOTTITIS	.8230	3.0	3.8
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6733	3.4	4.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5076	2.7	3.3
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3860	2.1	2.5
71	03	MED	LARYNGOTRACHEITIS	.7663	3.2	4.0
72	03	MED	NASAL TRAUMA & DEFORMITY	.6534	2.8	3.8
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7507	3.3	4.4
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17	.3347	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1785	8.1	10.2
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6860	8.4	11.3
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1569	3.4	4.9
78	04	MED	PULMONARY EMBOLISM	1.4068	6.3	7.4
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6331	6.7	8.4
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.9177	4.7	5.9
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.5160	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3628	5.3	7.2
83	04	MED	MAJOR CHEST TRAUMA W CC	.9508	4.4	5.6
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5041	2.7	3.3
85	04	MED	PLEURAL EFFUSION W CC	1.2361	5.1	6.7
86	04	MED	PLEURAL EFFUSION W/O CC	.6843	3.0	3.9
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3672	4.8	6.4
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9558	4.4	5.4
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0865	5.2	6.3
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6669	3.8	4.5
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.7210	3.3	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2047	5.1	6.4
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7722	3.5	4.4
94	04	MED	PNEUMOTHORAX W CC	1.1904	4.9	6.5
95	04	MED	PNEUMOTHORAX W/O CC	.6060	3.1	3.9
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7917	4.0	4.9
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5942	3.2	3.8
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.6921	3.6	4.9
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6739	2.3	3.0
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5155	1.7	2.1
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8304	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5402	2.2	2.8
103	05	SURG	HEART TRANSPLANT	16.8723	30.4	48.1
104	05	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD CATH.	7.2756	9.9	12.5
105	05	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W/O CARD CATH.	5.7011	7.9	9.7
106	05	SURG	CORONARY BYPASS WITH PTCA	7.3400	9.2	10.9
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.4891	9.5	10.7
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9512	8.6	11.3
109	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.0670	7.0	8.0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1419	7.4	9.7
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2188	5.1	5.9
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9862	2.8	3.9
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.7407	9.8	13.0
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5023	6.0	8.4
115	05	SURG	PERM PACE IMPLNT W AMI, HRT FAIL OR SHOCK OR AICD LEAD OR GEN PROC.	3.5531	6.4	8.8
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR PTCA W CORONARY ART STENT.	2.4811	3.0	4.2
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2368	2.7	4.0
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5711	2.0	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.2960	3.2	5.4
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9568	4.9	8.2
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP DISCH ALIVE	1.6354	5.7	7.0
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP DISCH ALIVE	1.1299	3.6	4.4
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4874	2.7	4.4
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.3790	3.5	4.5
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0130	2.2	2.9
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5820	9.7	12.7
127	05	MED	HEART FAILURE & SHOCK	1.0143	4.3	5.5
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7671	5.3	6.0
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0878	1.8	3.0
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9435	4.9	6.0
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6077	3.9	4.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
132 ...	05	MED	ATHEROSCLEROSIS W CC	.6711	2.5	3.2
133 ...	05	MED	ATHEROSCLEROSIS W/O CC	.5562	2.0	2.5
134 ...	05	MED	HYPERTENSION	.5838	2.7	3.5
135 ...	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	.8519	3.3	4.4
136 ...	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	.5766	2.4	3.0
137 ...	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	.8168	3.3	3.3
138 ...	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8012	3.1	4.1
139 ...	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.4981	2.1	2.6
140 ...	05	MED	ANGINA PECTORIS	.5973	2.4	3.0
141 ...	05	MED	SYNCOPE & COLLAPSE W CC	.7029	3.0	3.9
142 ...	05	MED	SYNCOPE & COLLAPSE W/O CC	.5316	2.2	2.8
143 ...	05	MED	CHEST PAIN	.5265	1.8	2.3
144 ...	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1123	3.8	5.3
145 ...	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6305	2.2	2.9
146 ...	06	SURG	RECTAL RESECTION W CC	2.7210	9.0	10.3
147 ...	06	SURG	RECTAL RESECTION W/O CC	1.5887	6.1	6.7
148 ...	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4239	10.3	12.3
149 ...	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5698	6.3	6.9
150 ...	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.7465	8.9	10.9
151 ...	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2832	4.8	5.9
152 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9427	7.0	8.3
153 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1905	5.1	5.6
154 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1849	10.3	13.4
155 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3570	3.6	4.7
156 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	.8412	6.0	6.0
157 ...	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2071	3.9	5.4
158 ...	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6434	2.1	2.6
159 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.2873	3.7	5.0
160 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7413	2.2	2.7
161 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.0742	2.9	4.1
162 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.6129	1.7	2.0
163 ...	06	SURG	*HERNIA PROCEDURES AGE 0–17	.8700	2.1	2.1
164 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3206	7.3	8.5
165 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2301	4.3	5.0
166 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4518	4.0	5.1
167 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.8548	2.4	2.8
168 ...	03	SURG	MOUTH PROCEDURES W CC	1.1593	3.1	4.6
169 ...	03	SURG	MOUTH PROCEDURES W/O CC	.7155	1.9	2.5
170 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8008	7.9	11.3
171 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1668	3.6	4.8
172 ...	06	MED	DIGESTIVE MALIGNANCY W CC	1.3152	5.2	7.1
173 ...	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7316	2.8	4.0
174 ...	06	MED	G.I. HEMORRHAGE W CC	.9945	4.0	4.9
175 ...	06	MED	G.I. HEMORRHAGE W/O CC	.5305	2.5	3.0
176 ...	06	MED	COMPLICATED PEPTIC ULCER	1.1068	4.3	5.5
177 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8646	3.7	4.6
178 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6344	2.7	3.2
179 ...	06	MED	INFLAMMATORY BOWEL DISEASE	1.1084	5.0	6.4
180 ...	06	MED	G.I. OBSTRUCTION W CC	.9184	4.2	5.4
181 ...	06	MED	G.I. OBSTRUCTION W/O CC	.5254	2.9	3.5
182 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7709	3.4	4.4
183 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5594	2.4	3.0
184 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17	.5224	2.5	3.2
185 ...	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8303	3.3	4.5
186 ...	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3207	2.9	2.9
187 ...	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7415	3.0	4.0
188 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0758	4.1	5.6
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5600	2.4	3.2
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.7636	3.8	5.3
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4088	10.8	14.6
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7111	5.4	6.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.3324	10.4	12.5
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6689	5.8	6.9
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.7947	8.3	9.8
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6378	4.9	5.7
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	2.3864	7.1	8.6
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2024	4.0	4.6
199 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3873	7.7	10.2
200 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.2791	7.4	11.5
201 ...	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.5903	10.4	14.4
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3123	5.1	6.8
203 ...	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2979	5.1	6.9
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2114	4.7	6.1
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC	1.2109	4.9	6.6
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC	.6932	3.1	4.1
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0711	4.0	5.2
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6178	2.3	2.9
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.1818	4.9	5.5
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	1.8153	6.1	7.1
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2530	4.7	5.2
212 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	.8679	3.2	3.8
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.6323	6.2	8.4
214 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
215 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.1241	7.0	9.8
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	2.7825	8.7	13.0
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4630	4.2	5.3
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9926	2.8	3.3
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5827	5.3	5.3
221 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
222 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.9257	2.0	2.6
224 ...	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.7876	1.7	2.1
225 ...	08	SURG	FOOT PROCEDURES	1.0120	3.0	4.4
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC	1.4076	4.0	5.9
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7916	2.1	2.7
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	1.0048	2.3	3.4
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.7055	1.8	2.4
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.1097	3.1	4.5
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.2922	3.0	4.6
232 ...	08	SURG	ARTHROSCOPY	1.0895	2.3	3.8
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0599	5.4	7.7
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.1712	2.8	3.6
235 ...	08	MED	FRACTURES OF FEMUR	.7526	3.9	5.4
236 ...	08	MED	FRACTURES OF HIP & PELVIS	.7260	4.1	5.3
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5367	2.9	3.6
238 ...	08	MED	OSTEOMYELITIS	1.3382	6.7	8.9
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	.9661	5.0	6.4
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2253	5.0	6.7
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5875	3.1	4.0
242 ...	08	MED	SEPTIC ARTHRITIS	1.0391	5.2	6.8
243 ...	08	MED	MEDICAL BACK PROBLEMS	.7159	3.8	4.9
244 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7056	3.9	5.0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
245 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4961	2.9	3.8
246 ...	08	MED	NON-SPECIFIC ARTHROPATHIES	.5662	3.1	3.9
247 ...	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5542	2.6	3.5
248 ...	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7487	3.6	4.7
249 ...	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6514	2.6	3.6
250 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	.6776	3.2	4.2
251 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4622	2.3	3.0
252 ...	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	.2532	1.8	1.8
253 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7188	3.7	4.9
254 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4315	2.7	3.4
255 ...	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17	.2947	2.9	2.9
256 ...	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7564	3.8	5.1
257 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9219	2.4	3.0
258 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7237	1.9	2.1
259 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8840	2.0	3.1
260 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6238	1.4	1.5
261 ...	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9138	1.7	2.2
262 ...	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.8738	2.9	4.2
263 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.0055	8.8	11.9
264 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1061	5.4	7.2
265 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.4806	4.2	6.5
266 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8252	2.5	3.4
267 ...	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.9378	3.0	4.6
268 ...	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.0673	2.3	3.6
269 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5778	5.6	7.9
270 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7218	2.2	3.2
271 ...	09	MED	SKIN ULCERS	1.0023	5.7	7.2
272 ...	09	MED	MAJOR SKIN DISORDERS W CC	1.0465	4.9	6.4
273 ...	09	MED	MAJOR SKIN DISORDERS W/O CC	.6251	3.6	4.8
274 ...	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1170	4.8	6.8
275 ...	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5288	2.6	3.6
276 ...	09	MED	NON-MALIGANT BREAST DISORDERS	.6416	3.6	4.5
277 ...	09	MED	CELLULITIS AGE >17 W CC	.8345	4.8	5.9
278 ...	09	MED	CELLULITIS AGE >17 W/O CC	.5561	3.8	4.5
279 ...	09	MED	CELLULITIS AGE 0–17	.6697	4.3	5.0
280 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6624	3.3	4.3
281 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4540	2.5	3.2
282 ...	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	.2563	2.2	2.2
283 ...	09	MED	MINOR SKIN DISORDERS W CC	.6961	3.6	4.8
284 ...	09	MED	MINOR SKIN DISORDERS W/O CC	.4419	2.6	3.3
285 ...	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.0445	8.1	11.0
286 ...	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.2173	5.5	7.0
287 ...	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8652	8.0	11.3
288 ...	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0156	4.7	5.9
289 ...	10	SURG	PARATHYROID PROCEDURES	1.0132	2.2	3.2
290 ...	10	SURG	THYROID PROCEDURES	.9181	1.9	2.5
291 ...	10	SURG	THYROGLOSSAL PROCEDURES	.5752	1.5	1.8
292 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.5779	7.5	10.7
293 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2954	3.9	5.5
294 ...	10	MED	DIABETES AGE >35	.7500	3.8	4.9
295 ...	10	MED	DIABETES AGE 0–35	.7234	3.0	4.0
296 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8511	4.1	5.4
297 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5206	2.9	3.7
298 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	.5479	2.4	3.7
299 ...	10	MED	INBORN ERRORS OF METABOLISM	.8774	3.9	5.4
300 ...	10	MED	ENDOCRINE DISORDERS W CC	1.0807	4.8	6.3
301 ...	10	MED	ENDOCRINE DISORDERS W/O CC	.6023	2.9	3.8
302 ...	11	SURG	KIDNEY TRANSPLANT	3.6251	8.6	10.1

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
303 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.6598	7.5	9.2
304 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3331	6.5	9.0
305 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1358	3.2	3.9
306 ...	11	SURG	PROSTATECTOMY W CC	1.2407	3.8	5.5
307 ...	11	SURG	PROSTATECTOMY W/O CC	.6423	2.0	2.4
308 ...	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5218	4.1	6.0
309 ...	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.9101	2.1	2.6
310 ...	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0630	3.0	4.3
311 ...	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.6087	1.6	2.0
312 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	.9880	2.9	4.3
313 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6269	1.8	2.4
314 ...	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4939	2.3	2.3
315 ...	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0691	4.6	8.0
316 ...	11	MED	RENAL FAILURE	1.3318	5.0	6.9
317 ...	11	MED	ADMIT FOR RENAL DIALYSIS	.6194	2.0	2.9
318 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.0973	4.4	6.1
319 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.6170	2.2	3.0
320 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8675	4.5	5.6
321 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5826	3.4	4.0
322 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5394	3.3	4.1
323 ...	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7679	2.4	3.2
324 ...	11	MED	URINARY STONES W/O CC	.4360	1.6	1.9
325 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	.6246	3.0	4.0
326 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4152	2.1	2.7
327 ...	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	.3532	3.1	3.1
328 ...	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7189	2.8	3.7
329 ...	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4911	1.7	2.3
330 ...	11	MED	*URETHRAL STRICTURE AGE 0–17	.3182	1.6	1.6
331 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	.9946	4.2	5.6
332 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.6236	2.7	3.6
333 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	.7891	3.5	5.0
334 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5998	4.4	5.0
335 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.2055	3.4	3.7
336 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8873	2.8	3.6
337 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6186	2.0	2.3
338 ...	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0888	3.2	4.8
339 ...	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.9811	2.9	4.2
340 ...	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2828	2.4	2.4
341 ...	12	SURG	PENIS PROCEDURES	1.1213	2.1	3.0
342 ...	12	SURG	CIRCUMCISION AGE >17	.8601	2.6	3.5
343 ...	12	SURG	*CIRCUMCISION AGE 0–17	.1536	1.7	1.7
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0395	1.8	2.6
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8659	2.5	3.6
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9541	4.3	5.8
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5764	2.3	3.1
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.6894	3.2	4.3
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4142	2.1	2.8
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6931	3.6	4.4
351 ...	12	MED	*STERILIZATION, MALE	.2358	1.3	1.3
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6279	2.7	3.6
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9243	5.6	6.9
354 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4969	4.8	5.8
355 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9332	3.2	3.5
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7878	2.3	2.6
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.4468	7.3	9.0
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2133	3.7	4.4
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8676	2.8	3.0
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8910	2.6	3.2
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.2140	2.3	3.3
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.3014	1.4	1.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
363 ...	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.7481	2.5	3.3
364 ...	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.7290	2.6	3.6
365 ...	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7398	4.6	6.9
366 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1946	4.8	6.9
367 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5666	2.2	2.9
368 ...	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0553	5.0	6.4
369 ...	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5264	2.3	3.1
370 ...	14	SURG	CESAREAN SECTION W CC	1.0533	4.3	5.5
371 ...	14	SURG	CESAREAN SECTION W/O CC	.7197	3.2	3.5
372 ...	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5679	2.4	3.2
373 ...	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3987	1.8	2.1
374 ...	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7188	2.1	3.0
375 ...	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6840	4.4	4.4
376 ...	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.4925	2.4	2.9
377 ...	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.4598	3.4	4.5
378 ...	14	MED	ECTOPIC PREGNANCY	.8441	2.2	2.6
379 ...	14	MED	THREATENED ABORTION	.4401	2.2	3.6
380 ...	14	MED	ABORTION W/O D&C	.4235	1.7	2.0
381 ...	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.5583	1.6	2.1
382 ...	14	MED	FALSE LABOR	.1917	1.1	1.3
383 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.4732	2.7	3.7
384 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3576	1.9	2.7
385 ...	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3728	1.8	1.8
386 ...	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5269	17.9	17.9
387 ...	15		*PREMATURITY W MAJOR PROBLEMS	3.0918	13.3	13.3
388 ...	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8655	8.6	8.6
389 ...	15		*FULL TERM NEONATE W MAJOR PROBLEMS	1.4930	4.7	4.7
390 ...	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.6281	4.2	6.0
391 ...	15		*NORMAL NEWBORN	.1522	3.1	3.1
392 ...	16	SURG	SPLENECTOMY AGE >17	3.2630	7.8	10.4
393 ...	16	SURG	*SPLENECTOMY AGE 0–17	1.3447	9.1	9.1
394 ...	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.6349	4.1	7.1
395 ...	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8209	3.4	4.7
396 ...	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	2.2655	5.5	18.5
397 ...	16	MED	COAGULATION DISORDERS	1.2544	4.0	5.5
398 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2457	4.7	6.0
399 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6933	3.0	3.7
400 ...	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6552	6.1	9.4
401 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.5729	7.7	11.0
402 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0126	2.7	3.9
403 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6817	5.8	8.2
404 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8288	3.2	4.5
405 ...	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	1.9065	4.9	4.9
406 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.5701	6.9	9.5
407 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.1786	3.4	4.3
408 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	1.8039	4.6	7.5
409 ...	17	MED	RADIOTHERAPY	1.0112	4.3	5.8
410 ...	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.8403	2.7	3.4
411 ...	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3229	2.0	2.9
412 ...	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.5222	1.9	2.3
413 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3511	5.4	7.5
414 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7210	3.1	4.2
415 ...	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5656	10.5	14.4
416 ...	18	MED	SEPTICEMIA AGE >17	1.4885	5.7	7.4
417 ...	18	MED	SEPTICEMIA AGE 0–17	1.3566	4.5	6.0
418 ...	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9882	4.9	6.2
419 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8779	4.0	5.0
420 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6351	3.2	4.0
421 ...	18	MED	VIRAL ILLNESS AGE >17	.6757	3.1	4.0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
422 ...	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	.5729	2.6	3.3
423 ...	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6011	5.8	7.8
424 ...	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3280	9.0	14.3
425 ...	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.6791	3.0	4.1
426 ...	19	MED	DEPRESSIVE NEUROSES	.5537	3.5	4.9
427 ...	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5609	3.4	4.8
428 ...	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7031	4.5	7.2
429 ...	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8721	5.2	7.4
430 ...	19	MED	PSYCHOSES	.8073	6.2	8.8
431 ...	19	MED	CHILDHOOD MENTAL DISORDERS	.7541	4.6	7.3
432 ...	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7008	3.4	5.2
433 ...	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3024	2.3	3.2
434 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.6998	3.9	5.2
435 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4143	3.5	4.4
436 ...	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.8189	11.4	14.1
437 ...	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	.7027	7.7	9.2
438 ...	.....		NO LONGER VALID	.0000	.0	.0
439 ...	21	SURG	SKIN GRAFTS FOR INJURIES	1.5601	5.0	7.7
440 ...	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.7978	5.7	8.9
441 ...	21	SURG	HAND PROCEDURES FOR INJURIES	1.0114	2.3	3.4
442 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.2637	5.2	8.1
443 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.9271	2.5	3.3
444 ...	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7110	3.5	4.5
445 ...	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4790	2.6	3.4
446 ...	21	MED	*TRAUMATIC INJURY AGE 0–17	.2955	2.4	2.4
447 ...	21	MED	ALLERGIC REACTIONS AGE >17	.4935	1.9	2.5
448 ...	21	MED	*ALLERGIC REACTIONS AGE 0–17	.0972	2.9	2.9
449 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.7848	2.7	3.8
450 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4333	1.6	2.1
451 ...	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2625	2.1	2.1
452 ...	21	MED	COMPLICATIONS OF TREATMENT W CC	.9785	3.6	5.0
453 ...	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4855	2.2	2.9
454 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8478	3.2	4.7
455 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4694	2.0	2.7
456 ...	.....		NO LONGER VALID	.0000	.0	.0
457 ...	.....		NO LONGER VALID	.0000	.0	.0
458 ...	.....		NO LONGER VALID	.0000	.0	.0
459 ...	.....		NO LONGER VALID	.0000	.0	.0
460 ...	.....		NO LONGER VALID	.0000	.0	.0
461 ...	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.0644	2.4	4.4
462 ...	23	MED	REHABILITATION	1.3849	10.1	12.6
463 ...	23	MED	SIGNS & SYMPTOMS W CC	.6757	3.3	4.4
464 ...	23	MED	SIGNS & SYMPTOMS W/O CC	.5006	2.6	3.4
465 ...	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5238	1.9	2.9
466 ...	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6193	2.3	4.1
467 ...	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4944	2.3	4.4
468 ...	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6566	9.5	13.5
469 ...	.....		**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470 ...	.....		**UNGROUPABLE	.0000	.0	.0
471 ...	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.3201	5.3	6.1
472 ...	.....		NO LONGER VALID	.0000	.0	.0
473 ...	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4688	7.6	13.0
474 ...	.....		NO LONGER VALID	.0000	.0	.0
475 ...	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.7373	8.1	11.3
476 ...	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2226	8.9	11.9
477 ...	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.7581	5.3	8.2
478 ...	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3334	5.1	7.5
479 ...	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4224	3.0	3.8
480 ...	.....	SURG	LIVER TRANSPLANT	10.6455	19.4	26.8
481 ...	.....	SURG	BONE MARROW TRANSPLANT	9.7725	24.5	27.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
482 ...	.....	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.5950	10.0	12.8
483 ...	.....	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES	16.2677	33.9	42.1
484 ...	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.3170	9.5	14.8
485 ...	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	3.0440	7.7	9.6
486 ...	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.9559	8.4	12.4
487 ...	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9036	5.4	7.5
488 ...	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.5576	11.9	17.2
489 ...	25	MED	HIV W MAJOR RELATED CONDITION	1.7700	6.2	8.9
490 ...	25	MED	HIV W OR W/O OTHER RELATED CONDITION	.9720	3.9	5.4
491 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6670	3.1	3.7
492 ...	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.5197	11.4	17.2
493 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.7952	4.2	5.6
494 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9989	1.9	2.4
495 ...	.....	SURG	LUNG TRANSPLANT	9.0247	13.7	17.0
496 ...	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.4507	8.6	10.6
497 ...	08	SURG	SPINAL FUSION W CC	2.7585	5.0	6.3
498 ...	08	SURG	SPINAL FUSION W/O CC	1.6870	2.9	3.5
499 ...	08	SURG	BACK & NECK PROCS EXCEPT SPINAL FUSION W CC	1.4669	3.8	5.0
500 ...	08	SURG	BACK & NECK PROCS EXCEPT SPINAL FUSION W/O CC	.9709	2.4	2.9
501 ...	08	SURG	KNEE PROC W PDX OF INFECTION W CC	2.5459	8.4	10.4
502 ...	08	SURG	KNEE PROC W PDX OF INFECTION W/O CC	1.5548	5.5	6.6
503 ...	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2316	3.2	4.2
504 ...	22	SURG	EXTENSIVE 3RD DEGREE BURN W SKIN GRAFT	13.9440	23.1	31.6
505 ...	22		EXTENSIVE 3RD DEGREE BURN W/O SKIN GRAFT	1.7871	2.3	5.9
506 ...	22		FULL THICK BURN W SK GRAFT OR INHAL INJ W CC OR SIG TR	4.2300	12.2	16.8
507 ...	22		FULL THICK BURN W SK GRAFT OR INHAL INJ W/O CC OR SIG TR	1.7017	6.5	9.0
508 ...	22		FULL THICK BURN W/O SK GRAFT OR INHAL INJ W CC OR SIG TR	1.3792	5.2	7.8
509 ...	22		FULL THICK BURN W/O SK GRAFT OR INHAL INJ W/O CC OR SIG TR.	.7376	3.3	4.9
510 ...	22		NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.1408	4.8	6.9
511 ...	22		NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.6001	3.5	4.8

*Medicare data have been supplemented by data from 19 states for low volume DRGs.
**DRGs 469 and 470 contain cases which could not be assigned to valid DRGs.
Note: Geometric mean is used only to determine payment for transfer cases.
Note: Arithmetic mean is used only to determine payment for outlier cases.
Note: Relative weights are based on medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis codes	Description	CC	MDC	DRG
337.3	Autonomic dysreflexia	N	1	18,19
438.53	Other paralytic syndrome, bilateral	N	1	12
482.40	Pneumonia due to Staphyloccus, unspecified	Y	4	79, 80, 81 [1]
			5	121
			15	387, 389,[2] 489 [3]
			25	
482.41	Pneumonia due to Staphylococcus aureus	Y	4	79, 80, 81
			5	121 [1]
			15	387, 389 [2]
			25	489 [3]
482.49	Other Staphylococcus pneumonia	Y	4	79, 80, 81
			5	121 [1]
			15	387, 389 [2]
			25	489 [3]
518.83	Chronic respiratory failure	Y	4	87
518.84	Acute and chronic respiratory	Y	4	87
			22	506, 507
519.00	Unspecified tracheostomy complication	Y	Pre	482
			4	101, 102
519.01	Infection of tracheostomy	Y	Pre	482
			4	101, 102
519.02	Mechanical complication of tracheostomy	Y	Pre	482
			4	101, 102
519.09	Other tracheostomy complication	Y	Pre	482
			4	101, 102

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis codes	Description	CC	MDC	DRG
536.40	Unspecified gastrostomy complication	Y	6	188, 189, 190
536.41	Infection of gastrostomy	Y	6	188, 189, 190
536.42	Mechanical complication of gastrostomy	Y	6	188, 189, 190
536.49	Other gastrostomy complication	Y	6	188, 189, 190
564.81	Neurogenic bowel	N	6	182, 183, 184
564.89	Other functional disorders of intestine	N	6	182, 183, 184
569.62	Mechanical complication of colostomy and enterostomy	Y	6	188, 189, 190
659.70	Abnormality in fetal heart rate/rhythm, unspecified as to episode of care or not applicable.	N	14	370, 371, 372, 373, 374, 375
659.71	Abnormality in fetal heart rate/rhythm, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
659.73	Abnormality in fetal heart rate/rhythm, antepartum condition or complication.	N	14	383, 384
763.81	Abnormality in fetal heart rate or rhythm before the onset of labor	N	15	390
763.82	Abnormality in fetal heart rate or rhythm during labor	N	15	390
763.83	√Abnormality in fetal heart rate or rhythm, unspecified as to time of onset.	N	15	390
763.89	Other specified complications of labor and delivery affecting fetus and newborn.	N	15	390
780.71	Chronic fatigue syndrome	N	23 25	463, 464 490
780.79	√Other malaise and fatigue	N	23 25	463, 464 490
786.03	Apnea	Y	4 25	99, 100 490
786.04	Cheyne-Stokes respiration	Y	4 25	99, 100 490
786.05	Shortness of breath	N	4 25	99, 100 490
786.06	Tachypnea	N	4 25	99, 100 490
786.07	Wheezing	N	4 25	99, 100 490
965.61	Poisoning by propionic acid derivatives	N	21	449, 450, 451
965.69	Poisoning by other antirheumatics	N	21	449, 450, 451
995.86	Malignant hyperthermia	Y	21	454, 455
996.55	Mechanical complications due to artificial skin graft and decellularized allodermis.	Y	21	452, 453
996.56	Mechanical complications due to peritoneal dialysis catheter	Y	21	452, 453
996.68	Infection and inflammatory reaction due to peritoneal dialysis catheter	Y	21	452, 453
V02.51	Carrier or suspected carrier of Group B streptococcus	N	23	467
V02.52	Carrier or suspected carrier of other streptococcus	N	23	467
V02.59	Carrier or suspected carrier of other specified bacterial diseases	N	23	467
V10.48	Personal history of malignant neoplasm of epididymis	N	17	411, 412
V13.61	Personal history of hypospadias	N	23	467
V13.69	Personal history other congenital malformation	N	23	467
V16.51	Family history of malignant neoplasm of kidney	N	23	467
V16.59	Family history of malignant neoplasm of other urinary organs	N	23	467
V18.61	Family history of polycystic kidney	N	23	467
V18.69	Family history of other kidney diseases	N	23	467
V23.81	Supervision of high-risk pregnancy of elderly primigravida	Y	14	469
V23.82	Supervision of high-risk pregnancy of elderly multigravida	Y	14	469
V23.83	Supervision of high-risk pregnancy of young primigravida	Y	14	469
V23.84	Supervision of high-risk pregnancy of young multigravida	Y	14	469
V23.89	Supervision of other high-risk pregnancy	Y	14	469
V26.51	Tubal ligation status	N	23	467
V26.52	Vasectomy status	N	23	467
V29.3	Observation for suspected genetic or metabolic condition	N	23	467
V43.83	Organ or tissue replaced by artificial skin	N	23	467
V44.50	Unspecified cystostomy status	N	23	467
V44.51	Cutaneous-vesicostomy status	N	23	467
V44.52	Appendico-vesicostomy status	N	23	467
V44.59	Other cystostomy status	N	23	467
V56.2	Fitting and adjustment of peritoneal dialysis catheter	N	11	317
V58.62	Encounter for aftercare for long-term (current) use of antibiotics	N	23	465, 466
V76.44	Special screening for malignant neoplasm of prostate	N	23	467
V76.45	Special screening for malignant neoplasm of testis	N	23	467

[1] Classified as a ''major complication'' in this DRG.
[2] Classified as a ''major problem'' in these DRGs.
[3] HIV major related condition in this DRG.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.31	Open chest transmyocardial revascularization	Y	5	108
36.32	Other transmyocardial revascularization	Y	5	108
36.39	Other heart revascularization	Y	5	108
37.67	Implantation of cardiomyostimulation system	Y	5	110, 111
			21	442, 443
			24	486
75.37	Amnioinfusion	N		
86.67	Dermal regenerative graft	Y	1	7, 8
			3	63
			5	120
			6	170, 171
			8	217
			9	263, 264, 265,
			10	266
			21	287
			22	439
			24	458, 472
				504, 506, 507
				486
92.30	Stereotactic radiosurgery, not otherwise specified	N [1]	1	7, 8
			10	292, 293
			17	401, 402, 408
92.31	Single source photon radiosurgery	N	1	7, 8
			10	292, 293
			17	401, 402, 408
92.32	Multi-source photon radiosurgery	N	1	7, 8
			10	292, 293
			17	401, 402, 408
92.33	Particulate radiosurgery	N	1	7, 8
			10	292, 293
			17	401, 402, 408
92.39	Stereotactic radiosurgery, not elsewhere classified	N	1	7, 8
			10	292, 293
			17	401, 402, 408
96.29	Reduction of intussusception of alimentary tract	N		
99.10	Injection or infusion of thrombolytic agent	N		
99.20	Injection or infusion of platelet inhibitor	N		

[1] Nonoperating room, but affecting DRG

TABLE 6C.—INVALID DIAGNOSIS CODE

Diagnosis codes	Description	CC	MDC	DRG
482.4	Pneumonia due to Staphylococcus	Y	4	79, 80, 81
			5	121 [1]
			15	387, 389 [2]
			25	489 [3]
519.0	Tracheostomy complication	Y	PRE	482
			4	101, 102
564.8	Other specified functional disorders of intestine	N	6	182, 183, 184
763.8	Other specified complications of labor and delivery affecting fetus and newborn.	N	15	390
780.7	Malaise and fatigue	N	23	463, 464
			25	490
965.6	Poisoning by antirheumatics [antiphlogistics]	N	21	449, 450, 451
V02.5	Carrier or suspected carrier of other specified bacterial diseases	N	23	467
V13.6	Personal history of congenital malformations	N	23	467
V16.5	Family history of malignant neoplasm of urinary organs	N	23	467
V18.6	Family history of kidney diseases	N	23	467
V23.8	Supervision of other high-risk pregnancy	Y	14	469
V44.5	Cystostomy status	N	23	467

[1] Classified as a ''major complication'' in this DRG.
[2] Classified as a ''major problem'' in these DRGs.
[3] HIV major related condition in this DRG.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.3	Other heart revascularization	Y	5	108
92.3	Stereotactic radiosurgery	N [1]	1	7, 8
			10	292, 293
			17	401, 402, 408

[1] Nonoperation room but effecting DRG.

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
518.81	Acute respiratory failure	Y	4	87
			22	506, 507
659.60	Elderly multigravida unspecified as to episode of care or not applicable	N	14	370, 371, 372, 373, 374, 375
659.61	Elderly multigravida delivered, with mention of antepartum condition	N	14	370, 371, 372, 373, 374, 375
659.63	Elderly multigravida with antepartum condition or complication	N	14	383, 384
V56.1	Fitting and adjustment of extracorporeal dialysis catheter	N	11	317
V82.4	Maternal postnatal screening of chromosomal anomalies	N	23	467

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST

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CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*01100	*01123	*01146	*01172	*01195	*01281	*11515	48249
48240	48240	48240	48240	48240	48240	48240	*48230
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01101	*01124	*01150	*01173	*01196	*01282	*11595	48249
48240	48240	48240	48240	48240	48240	48240	*48231
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01102	*01125	*01151	*01174	*01200	*01283	*1221	48249
48240	48240	48240	48240	48240	48240	48240	*48232
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01103	*01126	*01152	*01175	*01201	*01284	*1304	48249
48240	48240	48240	48240	48240	48240	48240	*48239
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01104	*01130	*01153	*01176	*01202	*01285	*1363	48249
48240	48240	48240	48240	48240	48240	48240	*48240
48241	48241	48241	48241	48241	48241	48241	01100
48249	48249	48249	48249	48249	48249	48249	01101
*01105	*01131	*01154	*01180	*01203	*01286	*3373	01102
48240	48240	48240	48240	48240	48240	3350	01103
48241	48241	48241	48241	48241	48241	33510	01104
48249	48249	48249	48249	48249	48249	33511	01105
*01106	*01132	*01155	*01181	*01204	*01790	33519	01106
48240	48240	48240	48240	48240	48240	33520	01110
48241	48241	48241	48241	48241	48241	33521	01111
48249	48249	48249	48249	48249	48249	33522	01112
*01110	*01133	*01156	*01182	*01205	*01791	33523	01113
48240	48240	48240	48240	48240	48240	33524	01114
48241	48241	48241	48241	48241	48241	33529	01115
48249	48249	48249	48249	48249	48249	3358	01116
*01111	*01134	*01160	*01183	*01206	*01792	3359	01120
48240	48240	48240	48240	48240	48240	*4800	01121
48241	48241	48241	48241	48241	48241	48240	01122
48249	48249	48249	48249	48249	48249	48241	01123
*01112	*01135	*01161	*01184	*01210	*01793	48249	01124
48240	48240	48240	48240	48240	48240	*4801	01125
48241	48241	48241	48241	48241	48241	48240	01126
48249	48249	48249	48249	48249	48249	48241	01130
*01113	*01136	*01162	*01185	*01211	*01794	48249	01131
48240	48240	48240	48240	48240	48240	*4802	01132
48241	48241	48241	48241	48241	48241	48240	01133
48249	48249	48249	48249	48249	48249	48241	01134
*01114	*01140	*01163	*01186	*01212	*01795	48249	01135
48240	48240	48240	48240	48240	48240	*4808	01136
48241	48241	48241	48241	48241	48241	48240	01140
48249	48249	48249	48249	48249	48249	48241	01141
*01115	*01141	*01164	*01190	*01213	*01796	48249	01142
48240	48240	48240	48240	48240	48240	*4809	01143
48241	48241	48241	48241	48241	48241	48240	01144
48249	48249	48249	48249	48249	48249	48241	01145
*01116	*01142	*01165	*01191	*01214	*0212	48249	01146
48240	48240	48240	48240	48240	48240	*481	01150
48241	48241	48241	48241	48241	48241	48240	01151
48249	48249	48249	48249	48249	48249	48241	01152
*01120	*01143	*01166	*01192	*01215	*0310	48249	01153
48240	48240	48240	48240	48240	48240	*4820	01154
48241	48241	48241	48241	48241	48241	48240	01155
48249	48249	48249	48249	48249	48249	48241	01156
*01121	*01144	*01170	*01193	*01216	*0391	48249	01160
48240	48240	48240	48240	48240	48240	*4821	01161
48241	48241	48241	48241	48241	48241	48240	01162
48249	48249	48249	48249	48249	48249	48241	01163
*01122	*01145	*01171	*01194	*01280	*11505	48249	01164
48240	48240	48240	48240	48240	48240	*4822	01165
48241	48241	48241	48241	48241	48241	48240	01166
48249	48249	48249	48249	48249	48249	48241	01170

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01171	4955	01183	5078	01195	48240	48241	48249
01172	4956	01184	5080	01196	48241	48249	*5061
01173	4957	01185	5081	01200	48249	*4950	48240
01174	4958	01186	5171	01201	*48283	48240	48241
01175	4959	01190	*48249	01202	48240	48241	48249
01176	5060	01191	01100	01203	48241	48249	*5062
01180	5061	01192	01101	01204	48249	*4951	48240
01181	5070	01193	01102	01205	*48284	48240	48241
01182	5071	01194	01103	01206	48240	48241	48249
01183	5078	01195	01104	01210	48241	48249	*5063
01184	5080	01196	01105	01211	48249	*4952	48240
01185	5081	01200	01106	01212	*48289	48240	48241
01186	5171	01201	01110	01213	48240	48241	48249
01190	*48241	01202	01111	01214	48241	48249	*5064
01191	01100	01203	01112	01215	48249	*4953	48240
01192	01101	01204	01113	01216	*4829	48240	48241
01193	01102	01205	01114	0310	48240	48241	48249
01194	01103	01206	01115	11505	48241	48249	*5069
01195	01104	01210	01116	11515	48249	*4954	48240
01196	01105	01211	01120	1304	*4830	48240	48241
01200	01106	01212	01121	1363	48240	48241	48249
01201	01110	01213	01122	481	48241	48249	*5070
01202	01111	01214	01123	4820	48249	*4955	48240
01203	01112	01215	01124	4821	*4831	48240	48241
01204	01113	01216	01125	4822	48240	48241	48249
01205	01114	0310	01126	48230	48241	48249	*5071
01206	01115	11505	01130	48231	48249	*4956	48240
01210	01116	11515	01131	48232	*4838	48240	48241
01211	01120	1304	01132	48239	48240	48241	48249
01212	01121	1363	01133	48240	48241	48249	*5078
01213	01122	481	01134	48241	48249	*4957	48240
01214	01123	4820	01135	48249	*4841	48240	48241
01215	01124	4821	01136	48281	48240	48241	48249
01216	01125	4822	01140	48282	48241	48249	*5080
0310	01126	48230	01141	48283	48249	*4958	48240
11505	01130	48231	01142	48284	*4843	48240	48241
11515	01131	48232	01143	48289	48240	48241	48249
1304	01132	48239	01144	4829	48241	48249	*5081
1363	01133	48240	01145	4830	48249	*4959	48240
481	01134	48241	01146	4831	*4845	48240	48241
4820	01135	48249	01150	4838	48240	48241	48249
4821	01136	48281	01151	4841	48241	48249	*5088
4822	01140	48282	01152	4843	48249	*496	48240
48230	01141	48283	01153	4845	*4846	48240	48241
48231	01142	48284	01154	4846	48240	48241	48249
48232	01143	48289	01155	4847	48241	48249	*5089
48239	01144	4829	01156	4848	48249	*500	48240
48240	01145	4830	01160	485	*4847	48240	48241
48241	01146	4831	01161	486	48240	48241	48249
48249	01150	4838	01162	4870	48241	48249	*5171
48281	01151	4841	01163	4950	48249	*501	48240
48282	01152	4843	01164	4951	*4848	48240	48241
48283	01153	4845	01165	4952	48240	48241	48249
48284	01154	4846	01166	4953	48241	48249	*5178
48289	01155	4847	01170	4954	48249	*502	48240
4829	01156	4848	01171	4955	*485	48240	48241
4830	01160	485	01172	4956	48240	48241	48249
4831	01161	486	01173	4957	48241	48249	*51881
4838	01162	4870	01174	4958	48249	*503	51883
4841	01163	4950	01175	4959	*486	48240	51884
4843	01164	4951	01176	5060	48240	48241	78603
4845	01165	4952	01180	5061	48241	48249	78604
4846	01166	4953	01181	5070	48249	*504	*51882
4847	01170	4954	01182	5071	*4870	48240	51883
4848	01171	4955	01183	5078	48240	48241	51884
485	01172	4956	01184	5080	48241	48249	78603
486	01173	4957	01185	5081	48249	*505	78604
4870	01174	4958	01186	5171	*4871	48240	*51883
4950	01175	4959	01190	*48281	48240	48241	51881
4951	01176	5060	01191	48240	48241	48249	51882
4952	01180	5061	01192	48241	48249	*5060	51883
4953	01181	5070	01193	48249	*494	48240	51884
4954	01182	5071	01194	*48282	48240	48241	78603

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TABLE 6G.—DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*01100	*01146	*01195	*11515	01143	48282	4824	4824
4824	4824	4824	4824	01144	48283	*4870	*5178
*01101	*01150	*01196	*11595	01145	48284	4824	4824
4824	4824	4824	4824	01146	48289	*4871	*51889
*01102	*01151	*01200	*1221	01150	4829	4824	4824
4824	4824	4824	4824	01151	4830	*494	*5190
*01103	*01152	*01201	*1304	01152	4831	4824	5190
4824	4824	4824	4824	01153	4838	*4950	*5191
*01104	*01153	*01202	*1363	01154	4841	4824	5190
4824	4824	4824	4824	01155	4843	*4951	*5198
*01105	*01154	*01203	*4800	01156	4845	4824	4824
4824	4824	4824	4824	01160	4846	*4952	5190
*01106	*01155	*01204	*4801	01161	4847	4824	*5199
4824	4824	4824	4824	01162	4848	*4953	4824
*01110	*01156	*01205	*4802	01163	485	4824	5190
4824	4824	4824	4824	01164	486	*4954	*74861
*01111	*01160	*01206	*4808	01165	4870	4824	4824
4824	4824	4824	4824	01166	4950	*4955	*V220
*01112	*01161	*01210	*4809	01170	4951	4824	V238
4824	4824	4824	4824	01171	4952	*4956	*V221
*01113	*01162	*01211	*481	01172	4953	4824	V238
4824	4824	4824	4824	01173	4954	*4957	*V222
*01114	*01163	*01212	*4820	01174	4955	4824	V238
4824	4824	4824	4824	01175	4956	*4958	*V230
*01115	*01164	*01213	*4821	01176	4957	4824	V238
4824	4824	4824	4824	01180	4958	*4959	*V231
*01116	*01165	*01214	*4822	01181	4959	4824	V238
4824	4824	4824	4824	01182	5060	*496	*V232
*01120	*01166	*01215	*48230	01183	5061	4824	V238
4824	4824	4824	4824	01184	5070	*500	*V233
*01121	*01170	*01216	*48231	01185	5071	4824	V238
4824	4824	4824	4824	01186	5078	*501	*V234
*01122	*01171	*01280	*48232	01190	5080	4824	V238
4824	4824	4824	4824	01191	5081	*502	*V235
*01123	*01172	*01281	*48239	01192	5171	4824	V238
4824	4824	4824	4824	01193	*48281	*503	*V237
*01124	*01173	*01282	*4824	01194	4824	4824	V238
4824	4824	4824	01100	01195	*48282	*504	*V238
*01125	*01174	*01283	01101	01196	4824	4824	V237
4824	4824	4824	01102	01200	*48283	*505	V238
*01126	*01175	*01284	01103	01201	4824	4824	V239
4824	4824	4824	01104	01202	*48284	*5060	*V239
*01130	*01176	*01285	01105	01203	4824	4824	V238
4824	4824	4824	01106	01204	*48289	*5061	
*01131	*01180	*01286	01110	01205	4824	4824	
4824	4824	4824	01111	01206	*4829	*5062	
*01132	*01181	*01790	01112	01210	4824	4824	
4824	4824	4824	01113	01211	*4830	*5063	
*01133	*01182	*01791	01114	01212	4824	4824	
4824	4824	4824	01115	01213	*4831	*5064	
*01134	*01183	*01792	01116	01214	4824	4824	
4824	4824	4824	01120	01215	*4838	*5069	
*01135	*01184	*01793	01121	01216	4824	4824	
4824	4824	4824	01122	0310	*4841	*5070	
*01136	*01185	*01794	01123	11505	4824	4824	
4824	4824	4824	01124	11515	*4843	*5071	
*01140	*01186	*01795	01125	1304	4824	4824	
4824	4824	4824	01126	1363	*4845	*5078	
*01141	*01190	*01796	01130	481	4824	4824	
4824	4824	4824	01131	4820	*4846	*5080	
*01142	*01191	*0212	01132	4821	4824	4824	
4824	4824	4824	01133	4822	*4847	*5081	
*01143	*01192	*0310	01134	48230	4824	4824	
4824	4824	4824	01135	48231	*4848	*5088	
*01144	*01193	*0391	01136	48232	4824	4824	
4824	4824	4824	01140	48239	*485	*5089	
*01145	*01194	*11505	01141	4824	4824	4824	
4824	4824	4824	01142	48281	*486	*5171	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36587	9.6084	2	4	7	12	20
2	6967	10.0350	3	5	8	13	20
3	3	9.3333	7	7	9	12	12
4	6322	7.7259	1	3	5	9	17
5	101105	3.6387	1	2	2	4	8
6	355	3.0225	1	1	2	4	7
7	12601	10.0945	2	4	7	12	20
8	3030	3.1845	1	1	2	4	7
9	1692	6.4923	1	3	5	8	13
10	19727	6.8631	2	3	5	8	14
11	2960	4.1365	1	2	3	5	8
12	38339	6.6619	2	3	5	8	12
13	6315	5.4716	2	3	4	6	9
14	372136	6.2938	2	3	5	8	12
15	145631	3.8599	1	2	3	5	7
16	13905	5.9283	2	3	4	7	11
17	3212	3.4315	1	2	3	4	7
18	27489	5.5809	2	3	4	7	10
19	7294	3.8174	1	2	3	5	7
20	6590	10.1862	2	5	8	13	19
21	1369	6.8152	2	3	5	8	14
22	2789	4.6587	2	2	4	6	9
23	6884	4.2594	1	2	3	5	8
24	57890	5.0641	1	2	4	6	10
25	22696	3.4294	1	2	3	4	7
26	34	3.1176	1	1	2	4	6
27	4153	5.4211	1	1	3	7	12
28	13896	5.9431	1	2	4	7	12
29	4266	3.5375	1	1	3	4	7
31	3075	4.4062	1	2	3	5	8
32	1343	2.9717	1	1	2	3	6
34	20072	5.4331	1	3	4	7	11
35	4264	3.5561	1	2	3	4	7
36	5393	1.5366	1	1	1	1	2
37	1685	3.7187	1	1	2	4	8
38	116	2.5948	1	1	2	3	5
39	1898	2.0327	1	1	1	2	4
40	2281	3.1806	1	1	2	4	7
42	4026	2.0904	1	1	1	2	4
43	120	3.4250	1	2	3	5	7
44	1343	5.0551	2	3	4	6	9
45	2414	3.4731	1	2	3	4	6
46	3148	4.6436	1	2	4	6	9
47	1220	3.2975	1	1	3	4	7
48	2	4.5000	4	4	5	5	5
49	2277	5.0097	1	2	4	6	9
50	3004	1.9767	1	1	2	2	3
51	299	2.8194	1	1	1	3	6
52	89	2.7528	1	1	2	3	7
53	2989	3.6554	1	1	2	4	8
54	2	6.0000	5	5	7	7	7
55	1686	2.9543	1	1	2	3	6
56	684	2.8436	1	1	2	3	6
57	608	3.7237	1	1	3	4	7
59	120	2.4333	1	1	2	3	5
60	1	4.0000	4	4	4	4	4
61	278	4.5144	1	1	2	5	10
62	4	1.2500	1	1	1	1	2
63	3676	4.4502	1	2	3	5	9
64	3408	6.7183	1	2	5	8	14
65	29086	2.9715	1	2	2	4	5
66	6812	3.2606	1	2	3	4	6
67	489	3.7996	1	2	3	4	7
68	11522	4.1519	1	2	3	5	7
69	3450	3.3183	1	2	3	4	6
70	37	2.5405	1	1	2	3	4
71	99	3.9394	1	2	3	6	7
72	817	3.7931	1	2	3	5	7
73	6282	4.4062	1	2	3	6	8
74	2	2.5000	2	2	3	3	3

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
75	40757	10.2370	4	5	8	13	20
76	41668	11.3195	3	5	9	14	21
77	2040	4.8819	1	2	4	7	10
78	30845	7.3107	3	5	7	9	12
79	247000	8.4030	3	4	7	10	15
80	8299	5.8754	2	3	5	7	10
81	6	12.6667	2	3	6	8	8
82	71035	7.1298	2	3	6	9	14
83	7249	5.5655	2	3	4	7	10
84	1290	3.3256	1	2	3	4	6
85	22415	6.6640	2	3	5	8	13
86	1501	3.8741	1	2	3	5	7
87	73076	6.3172	1	3	5	8	12
88	388565	5.4142	2	3	4	7	10
89	469073	6.2791	2	4	5	8	11
90	38989	4.4632	2	3	4	6	8
91	48	3.9375	1	2	3	5	7
92	14464	6.3794	2	3	5	8	12
93	1314	4.3653	1	2	4	6	8
94	13391	6.4833	2	3	5	8	12
95	1388	3.8739	1	2	3	5	7
96	61778	4.8513	2	3	4	6	9
97	25587	3.8266	1	2	3	5	7
98	28	4.9286	1	2	3	5	13
99	26442	3.0393	1	1	2	4	6
100	10283	2.1219	1	1	2	3	4
101	20140	4.4383	1	2	3	5	9
102	4520	2.7914	1	1	2	3	5
103	490	48.0898	9	14	29	67	115
104	29151	12.4470	4	7	10	16	23
105	25542	9.6459	4	6	8	11	17
106	106585	10.6917	6	7	9	12	17
107	68972	7.9520	4	5	7	9	13
108	8075	11.7282	4	6	9	14	22
110	62245	9.6084	2	5	8	12	18
111	5581	5.8094	2	4	6	7	9
112	118470	3.9277	1	1	3	5	8
113	46689	12.2570	4	6	9	15	24
114	8489	8.3873	2	4	7	11	16
115	15007	8.7475	2	4	7	11	17
116	208927	4.1747	1	2	3	5	8
117	3726	3.9847	1	1	2	5	9
118	6481	2.9303	1	1	2	3	6
119	1629	5.3640	1	1	3	7	13
120	37814	8.1649	1	2	5	10	18
121	170012	6.6480	2	4	6	8	12
122	83182	4.2023	1	2	4	6	7
123	43363	4.4029	1	1	2	5	10
124	154194	4.4587	1	2	4	6	9
125	62627	2.8721	1	1	2	4	6
126	5399	12.4253	4	6	9	15	25
127	719871	5.5133	2	3	4	7	10
128	16049	6.0323	3	4	5	7	9
129	4455	2.9495	1	1	1	3	7
130	98047	5.9926	2	3	5	7	10
131	24574	4.6703	1	3	4	6	8
132	174092	3.1532	1	2	3	4	6
133	6631	2.4803	1	1	2	3	5
134	30358	3.4496	1	2	3	4	6
135	8217	4.3269	1	2	3	5	8
136	1113	2.9695	1	1	2	4	5
138	209079	4.0464	1	2	3	5	8
139	67303	2.5774	1	1	2	3	5
140	107658	2.9719	1	1	2	4	5
141	81733	3.8534	1	2	3	5	7
142	36613	2.7911	1	1	2	3	5
143	143826	2.2585	1	1	2	3	4
144	78710	5.2279	1	2	4	7	10
145	6350	2.8698	1	1	2	4	6
146	10372	10.2717	5	7	9	12	17

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
147	1779	6.7482	4	5	7	8	10
148	146892	12.2593	5	7	10	15	22
149	14387	6.8504	4	5	6	8	10
150	23756	10.8870	4	6	9	13	19
151	4149	5.8894	2	3	5	8	10
152	4713	8.3393	4	5	7	10	14
153	1604	5.6359	3	4	5	7	8
154	34348	13.3603	4	7	10	16	25
155	4743	4.6884	1	2	4	6	9
156	2	18.0000	6	6	30	30	30
157	9287	5.3854	1	2	4	7	11
158	4110	2.6190	1	1	2	3	5
159	18320	4.9678	1	2	4	6	9
160	9765	2.6768	1	1	2	3	5
161	14601	4.0877	1	2	3	5	9
162	7065	2.0350	1	1	1	2	4
163	5	11.8000	4	4	11	13	22
164	5272	8.5277	4	5	7	10	15
165	1639	4.9555	2	3	5	6	8
166	3542	5.1256	2	3	4	6	9
167	2325	2.8456	1	2	2	4	5
168	1700	4.5476	1	2	3	6	9
169	843	2.5326	1	1	2	3	5
170	12774	11.2370	2	5	8	14	23
171	1004	4.8337	1	2	4	6	9
172	32993	7.1114	2	3	5	9	14
173	2135	3.9611	1	1	3	5	8
174	248770	4.9263	2	3	4	6	9
175	21672	3.0085	1	2	3	4	5
176	18343	5.4925	2	3	4	7	10
177	11138	4.5572	2	2	4	6	8
178	3486	3.2114	1	2	3	4	6
179	12485	6.4200	2	3	5	8	12
180	93327	5.4284	2	3	4	7	10
181	21330	3.5057	1	2	3	4	6
182	234973	4.3571	1	2	3	5	8
183	69893	3.0179	1	1	2	4	6
184	91	3.1648	1	2	2	4	7
185	4046	4.4881	1	2	3	6	9
187	870	3.9908	1	2	3	5	8
188	75257	5.5524	1	2	4	7	11
189	8618	3.2060	1	1	2	4	6
190	59	5.2712	1	2	4	7	11
191	10625	14.5648	4	7	11	18	29
192	831	6.7088	2	4	6	8	12
193	7334	12.5020	5	7	10	15	22
194	773	6.9288	3	4	6	9	12
195	7094	9.8105	4	6	8	12	17
196	1260	5.7254	2	4	5	7	10
197	25012	8.6285	3	5	7	10	15
198	6357	4.5945	2	3	4	6	8
199	2037	10.1733	3	5	8	14	20
200	1339	11.4593	2	4	8	14	23
201	1651	14.2938	4	6	11	18	29
202	28649	6.7440	2	3	5	8	13
203	29508	6.8400	2	3	5	9	14
204	53140	6.0853	2	3	5	7	11
205	22927	6.5500	2	3	5	8	13
206	1614	4.0694	1	2	3	5	8
207	35502	5.1397	1	2	4	6	10
208	9472	2.8992	1	1	2	4	6
209	362634	5.4336	3	4	5	6	8
210	141586	7.0191	3	4	6	8	12
211	26005	5.1476	3	4	5	6	8
212	13	3.7692	1	2	4	5	6
213	7496	8.4066	2	4	6	11	16
216	6117	9.8190	2	4	7	12	19
217	20587	12.9505	3	5	9	16	27
218	23700	5.3217	2	3	4	6	10
219	18252	3.2882	1	2	3	4	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	5	3.2000	1	1	3	4	7
223	18540	2.6177	1	1	2	3	5
224	7682	2.0607	1	1	2	3	4
225	5644	4.3556	1	2	3	5	9
226	5540	5.9224	1	2	4	7	12
227	4597	2.7261	1	1	2	3	5
228	2757	3.4345	1	1	2	4	8
229	1100	2.3827	1	1	2	3	5
230	2386	4.5306	1	2	3	5	9
231	10685	4.5647	1	2	3	5	9
232	496	3.8327	1	1	2	4	9
233	4903	7.6490	2	3	5	9	16
234	2258	3.6151	1	2	3	5	7
235	5348	5.3113	1	2	4	6	10
236	39380	5.1518	1	3	4	6	9
237	1593	3.6353	1	2	3	5	7
238	7851	8.8615	3	4	7	11	17
239	59615	6.4289	2	3	5	8	12
240	13635	6.6882	2	3	5	8	13
241	2905	3.9983	1	2	3	5	7
242	2634	6.7358	2	3	5	8	13
243	81633	4.8627	2	3	4	6	9
244	12420	4.9928	2	3	4	6	9
245	4361	3.7420	1	2	3	5	7
246	1273	3.9309	1	2	3	5	7
247	12240	3.4938	1	2	3	4	7
248	8122	4.6959	1	2	4	6	9
249	10840	3.6358	1	1	3	4	7
250	3561	4.2263	1	2	3	5	8
251	2210	2.9570	1	1	2	4	5
252	1	1.0000	1	1	1	1	1
253	19384	4.8629	1	3	4	6	9
254	9275	3.3439	1	2	3	4	6
255	2	3.5000	1	1	6	6	6
256	5517	5.1064	1	2	4	6	10
257	21137	2.9877	1	2	2	3	5
258	16396	2.1344	1	1	2	3	3
259	3772	3.0803	1	1	2	3	7
260	4464	1.5383	1	1	1	2	2
261	1967	2.2466	1	1	2	3	4
262	659	4.2231	1	1	3	6	9
263	27474	11.3931	3	5	8	14	22
264	3318	7.0530	2	3	5	8	14
265	4309	6.5331	1	2	4	8	13
266	2464	3.4054	1	1	2	4	7
267	250	4.6400	1	2	3	5	9
268	875	3.5783	1	1	2	4	7
269	9415	7.8786	2	3	6	10	16
270	2662	3.1480	1	1	2	4	7
271	22961	7.1545	3	4	6	9	13
272	5940	6.4330	2	3	5	8	12
273	1307	4.7980	1	2	4	6	8
274	2409	6.7430	1	3	5	8	14
275	210	3.5143	1	1	2	4	7
276	932	4.4678	1	2	4	6	8
277	81663	5.9066	2	3	5	7	10
278	24598	4.4950	2	3	4	6	8
279	12	5.0000	2	2	4	7	9
280	14156	4.3177	1	2	3	5	8
281	5945	3.1527	1	1	3	4	6
282	2	2.0000	2	2	2	2	2
283	5201	4.8029	1	2	4	6	9
284	1656	3.3255	1	2	3	4	6
285	5534	11.0193	3	5	8	13	21
286	2141	6.9650	3	4	5	8	13
287	6161	11.2446	3	5	8	13	22
288	1478	5.9303	2	3	5	6	9
289	5457	3.2448	1	1	2	3	7
290	8922	2.5158	1	1	2	3	4
291	66	1.7576	1	1	1	2	3

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
292	5029	10.7174	2	4	8	14	21
293	347	5.5476	1	2	4	7	12
294	82039	4.9200	1	2	4	6	9
295	3593	3.9585	1	2	3	5	7
296	235524	5.3934	2	3	4	7	10
297	32715	3.6521	1	2	3	4	7
298	91	3.7253	1	1	2	4	8
299	968	5.3657	1	2	4	7	10
300	16820	6.2855	2	3	5	8	12
301	2395	3.8113	1	2	3	5	7
302	7784	10.1382	5	6	8	12	18
303	19638	9.2247	4	5	7	10	16
304	12813	8.9904	2	4	7	11	18
305	2552	3.8985	1	2	3	5	7
306	10658	5.5019	1	2	3	7	12
307	2355	2.3996	1	1	2	3	4
308	9167	6.0165	1	2	4	8	13
309	3541	2.5945	1	1	2	3	5
310	26694	4.2835	1	2	3	5	9
311	7805	1.9543	1	1	1	2	4
312	1731	4.3437	1	1	3	6	9
313	587	2.3799	1	1	2	3	5
314	1	10.0000	10	10	10	10	10
315	28283	8.0413	1	2	5	10	18
316	93071	6.8024	2	3	5	9	14
317	787	2.8666	1	1	2	3	6
318	6194	6.1022	1	3	5	8	12
319	407	2.9902	1	1	2	4	6
320	177474	5.5698	2	3	4	7	10
321	23679	4.0416	2	2	3	5	7
322	82	4.1098	2	2	3	4	7
323	16931	3.2166	1	1	2	4	6
324	7513	1.9385	1	1	1	2	4
325	7409	3.9591	1	2	3	5	8
326	2192	2.7199	1	1	2	3	5
327	9	2.8889	1	1	2	3	4
328	759	3.7167	1	2	3	5	7
329	87	2.2644	1	1	1	3	4
331	43598	5.5769	1	3	4	7	11
332	4517	3.5603	1	1	3	5	7
333	306	4.9477	1	2	4	6	11
334	18572	4.9690	3	3	4	6	8
335	10338	3.7163	2	3	3	4	5
336	54082	3.6046	1	2	3	4	7
337	31770	2.2858	1	1	2	3	4
338	2767	4.7879	1	2	3	6	10
339	1987	4.1726	1	1	3	5	9
340	2	1.0000	1	1	1	1	1
341	4909	2.9589	1	1	2	3	6
342	1007	3.4518	1	2	2	4	7
344	3882	2.6285	1	1	1	3	5
345	1343	3.6389	1	1	2	4	8
346	4844	5.8179	1	3	4	7	11
347	365	3.1370	1	1	2	4	6
348	3181	4.2521	1	2	3	5	8
349	632	2.7658	1	1	2	4	5
350	6114	4.3999	2	2	4	5	8
352	638	3.6160	1	2	3	4	7
353	2816	6.9457	3	4	5	8	12
354	9926	5.7743	3	3	4	6	10
355	5640	3.4624	2	3	3	4	5
356	28862	2.6478	1	2	2	3	4
357	6330	9.0289	3	5	7	11	17
358	27373	4.3708	2	3	3	5	7
359	27990	2.9775	2	2	3	3	4
360	17843	3.1581	1	2	3	4	5
361	540	3.3259	1	1	2	3	7
363	3943	3.3109	1	2	2	3	6
364	1828	3.5656	1	1	2	5	8
365	2298	6.8903	1	2	5	9	14

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
366	4368	6.8116	1	3	5	8	14
367	506	2.8893	1	1	2	3	6
368	2895	6.3530	2	3	5	8	12
369	2588	3.0622	1	1	2	4	6
370	1154	5.4610	2	3	4	5	9
371	1157	3.4754	2	3	3	4	5
372	975	3.1549	1	2	2	3	5
373	3868	2.1171	1	1	2	2	3
374	147	3.0340	1	2	2	3	3
375	9	5.1111	2	2	3	9	10
376	214	2.9252	1	2	2	3	6
377	52	4.4808	1	2	3	6	9
378	168	2.5952	1	1	2	3	4
379	334	3.5868	1	1	2	3	7
380	87	2.0345	1	1	2	2	3
381	187	2.1283	1	1	1	2	4
382	40	1.2750	1	1	1	1	2
383	1460	3.7301	1	2	3	4	8
384	123	2.6585	1	1	2	3	6
385	1	2.0000	2	2	2	2	2
389	9	8.6667	1	3	7	10	15
390	13	6.0000	2	2	4	5	17
392	2513	10.3828	4	5	7	12	21
394	1805	7.0853	1	2	4	8	16
395	70948	4.7241	1	2	3	6	9
396	15	18.4667	1	2	5	11	15
397	18814	5.5200	1	2	4	7	11
398	18127	6.0414	2	3	5	7	11
399	1322	3.7239	1	2	3	5	7
400	7225	9.3664	2	3	6	12	20
401	6653	11.0137	2	4	8	14	23
402	1464	3.8907	1	1	3	5	9
403	38919	8.1409	2	3	6	10	17
404	3797	4.4464	1	2	3	6	9
406	3308	9.5299	2	4	7	12	20
407	634	4.3202	1	2	4	5	8
408	2667	7.5047	1	2	5	9	16
409	4644	5.8404	2	3	4	6	11
410	59252	3.4182	1	2	3	4	6
411	18	2.8889	1	1	2	2	6
412	24	2.3333	1	1	2	3	4
413	7781	7.4429	2	3	6	9	15
414	676	4.2219	1	2	3	5	8
415	45158	14.3432	4	7	11	18	28
416	230365	7.3967	2	4	6	9	14
417	41	5.9024	2	2	5	7	11
418	21184	6.1906	2	3	5	8	11
419	15269	5.0200	2	3	4	6	9
420	2680	3.9474	1	2	3	5	7
421	12113	3.9569	1	2	3	5	7
422	86	3.3372	1	2	2	5	7
423	10723	7.7520	2	3	6	9	15
424	1621	14.2961	2	5	10	18	29
425	15405	4.1352	1	2	3	5	8
426	4449	4.9020	1	2	3	6	10
427	1633	4.8010	1	2	3	6	10
428	940	7.1755	1	2	4	8	14
429	32769	7.1661	2	3	5	8	14
430	56829	8.7198	2	4	7	11	17
431	217	7.3088	1	3	5	9	13
432	409	5.2152	1	2	3	6	12
433	6811	3.2053	1	1	2	4	7
434	21537	5.1804	2	3	4	6	9
435	14552	4.4078	1	2	4	5	8
436	3322	13.9618	4	7	13	21	28
437	12779	9.2061	3	5	8	12	16
439	1138	7.7065	1	3	5	9	16
440	5155	8.9081	2	3	6	10	19
441	570	3.4333	1	1	2	4	7
442	16247	8.1177	1	3	6	10	17

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
443	3153	3.3321	1	1	2	4	7
444	3425	4.5007	1	2	3	5	8
445	1243	3.3628	1	2	3	4	6
446	1	2.0000	2	2	2	2	2
447	4257	2.5130	1	1	2	3	5
449	27905	3.7822	1	1	3	5	8
450	6171	2.0826	1	1	1	2	4
451	9	2.7778	1	1	1	4	5
452	22863	5.0341	1	2	4	6	10
453	3796	2.9236	1	1	2	4	6
454	3855	4.6905	1	2	3	6	9
455	758	2.7401	1	1	2	3	5
456	194	8.5670	1	1	3	9	21
457	128	3.5859	1	1	1	3	9
458	1526	15.0308	3	7	12	19	31
459	480	8.9771	2	3	6	11	19
460	2327	6.0812	1	3	4	7	12
461	3047	4.4322	1	1	2	4	11
462	10348	12.4504	4	6	10	16	23
463	13983	4.4209	1	2	3	5	8
464	3556	3.3751	1	2	3	4	6
465	210	2.9095	1	1	1	3	5
466	1748	4.0955	1	1	2	4	9
467	1332	4.3949	1	1	2	4	7
468	61704	13.4718	3	6	10	17	27
471	12918	6.0694	3	4	5	7	10
472	179	27.2179	1	8	19	37	55
473	8429	12.7713	2	3	7	18	33
475	109339	11.1900	2	5	9	15	22
476	5924	11.9158	3	6	10	15	22
477	28747	8.1623	1	3	6	11	17
478	123286	7.4571	1	3	5	9	15
479	18337	3.8430	1	2	3	5	7
480	400	26.7550	8	11	20	32	53
481	256	27.1133	16	20	24	32	43
482	6596	12.7329	4	7	10	15	23
483	41763	40.0560	14	21	33	50	73
484	391	14.6931	2	6	11	18	27
485	3471	9.5906	4	5	7	11	18
486	2244	12.3382	1	5	10	16	25
487	4210	7.3983	2	3	6	9	14
488	865	17.0532	4	7	12	22	35
489	14894	8.9049	2	4	6	11	19
490	4863	5.4148	1	2	4	7	11
491	11011	3.6593	2	2	3	4	6
492	2334	17.1418	4	5	12	27	36
493	56210	5.6284	1	2	5	7	11
494	25155	2.4285	1	1	2	3	5
495	125	16.9920	7	10	13	19	31
496	895	10.5821	4	6	8	13	20
497	21969	6.2886	2	3	5	7	11
498	12500	3.5058	1	2	3	5	6
499	36205	4.9604	2	2	4	6	9
500	36448	2.8726	1	2	2	4	5
501	1895	10.4391	4	6	8	12	19
502	468	6.5876	3	4	6	8	10
503	6317	4.2169	1	2	3	5	8
	11244775						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36587	9.6084	2	4	7	12	20
2	6967	10.0350	3	5	8	13	20
3	3	9.3333	7	7	9	12	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
4	6322	7.7259	1	3	5	9	17
5	101105	3.6387	1	2	2	4	8
6	355	3.0225	1	1	2	4	7
7	12601	10.0945	2	4	7	12	20
8	3030	3.1845	1	1	2	4	7
9	1692	6.4923	1	3	5	8	13
10	19727	6.8631	2	3	5	8	14
11	2960	4.1365	1	2	3	5	8
12	38339	6.6619	2	3	5	8	12
13	6315	5.4716	2	3	4	6	9
14	372136	6.2938	2	3	5	8	12
15	145631	3.8599	1	2	3	5	7
16	13905	5.9283	2	3	4	7	11
17	3212	3.4315	1	2	3	4	7
18	27489	5.5809	2	3	4	7	10
19	7294	3.8174	1	2	3	5	7
20	6590	10.1862	2	5	8	13	19
21	1369	6.8152	2	3	5	8	14
22	2789	4.6587	2	2	4	6	9
23	6884	4.2594	1	2	3	5	8
24	57890	5.0641	1	2	4	6	10
25	22696	3.4294	1	2	3	4	7
26	34	3.1176	1	1	2	4	6
27	4153	5.4211	1	1	3	7	12
28	13896	5.9431	1	2	4	7	12
29	4266	3.5375	1	1	3	4	7
31	3075	4.4062	1	2	3	5	8
32	1343	2.9717	1	1	2	3	6
34	20072	5.4331	1	3	4	7	11
35	4264	3.5561	1	2	3	4	7
36	5393	1.5366	1	1	1	1	2
37	1685	3.7187	1	1	2	4	8
38	116	2.5948	1	1	2	3	5
39	1898	2.0327	1	1	1	2	4
40	2281	3.1806	1	1	2	4	7
42	4026	2.0904	1	1	1	2	4
43	120	3.4250	1	2	3	5	7
44	1343	5.0551	2	3	4	6	9
45	2414	3.4731	1	2	3	4	6
46	3148	4.6436	1	2	4	6	9
47	1220	3.2975	1	1	3	4	7
48	2	4.5000	4	4	5	5	5
49	2277	5.0097	1	2	4	6	9
50	3004	1.9767	1	1	2	2	3
51	299	2.8194	1	1	1	3	6
52	89	2.7528	1	1	2	3	7
53	2989	3.6554	1	1	2	4	8
54	2	6.0000	5	5	7	7	7
55	1686	2.9543	1	1	2	3	6
56	684	2.8436	1	1	2	3	6
57	608	3.7237	1	1	3	4	7
59	120	2.4333	1	1	2	3	5
60	1	4.0000	4	4	4	4	4
61	278	4.5144	1	1	2	5	10
62	4	1.2500	1	1	1	1	2
63	3676	4.4502	1	2	3	5	9
64	3408	6.7183	1	2	5	8	14
65	29086	2.9715	1	2	2	4	5
66	6812	3.2606	1	2	3	4	6
67	489	3.7996	1	2	3	4	7
68	11522	4.1519	1	2	3	5	7
69	3450	3.3183	1	2	3	4	6
70	37	2.5405	1	1	2	3	4
71	99	3.9394	1	2	3	6	7
72	817	3.7931	1	2	3	5	7
73	6282	4.4062	1	2	3	6	8
74	2	2.5000	2	2	3	3	3
75	40757	10.2370	4	5	8	13	20
76	41668	11.3195	3	5	9	14	21
77	2040	4.8819	1	2	4	7	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
78	30845	7.3107	3	5	7	9	12
79	247000	8.4030	3	4	7	10	15
80	8299	5.8754	2	3	5	7	10
81	6	12.6667	2	3	6	8	8
82	71035	7.1298	2	3	6	9	14
83	7249	5.5655	2	3	4	7	10
84	1290	3.3256	1	2	3	4	6
85	22415	6.6640	2	3	5	8	13
86	1501	3.8741	1	2	3	5	7
87	73076	6.3172	1	3	5	8	12
88	388565	5.4142	2	3	4	7	10
89	469073	6.2791	2	4	5	8	11
90	38989	4.4632	2	3	4	6	8
91	48	3.9375	1	2	3	5	7
92	14464	6.3794	2	3	5	8	12
93	1314	4.3653	1	2	4	6	8
94	13391	6.4833	2	3	5	8	12
95	1388	3.8739	1	2	3	5	7
96	61778	4.8513	2	3	4	6	9
97	25587	3.8266	1	2	3	5	7
98	28	4.9286	1	2	3	5	13
99	26442	3.0393	1	1	2	4	6
100	10283	2.1219	1	1	2	3	4
101	20140	4.4383	1	2	3	5	9
102	4520	2.7914	1	1	2	3	5
103	490	48.0898	9	14	29	67	115
104	29920	12.5288	4	7	10	16	23
105	26799	9.7413	4	6	8	11	17
106	4737	10.9261	5	7	9	13	19
107	101848	10.6808	6	7	9	12	17
108	6049	11.2420	4	6	9	14	21
109	68972	7.9520	4	5	7	9	13
110	62245	9.6084	2	5	8	12	18
111	5581	5.8094	2	4	6	7	9
112	118470	3.9277	1	1	3	5	8
113	46689	12.2570	4	6	9	15	24
114	8489	8.3873	2	4	7	11	16
115	15007	8.7475	2	4	7	11	17
116	208927	4.1747	1	2	3	5	8
117	3726	3.9847	1	1	2	5	9
118	6481	2.9303	1	1	2	3	6
119	1629	5.3640	1	1	3	7	13
120	37814	8.1649	1	2	5	10	18
121	170012	6.6480	2	4	6	8	12
122	83182	4.2023	1	2	4	6	7
123	43363	4.4029	1	1	2	5	10
124	154194	4.4587	1	2	4	6	9
125	62627	2.8721	1	1	2	4	6
126	5399	12.4253	4	6	9	15	25
127	719871	5.5133	2	3	4	7	10
128	16049	6.0323	3	4	5	7	9
129	4455	2.9495	1	1	1	3	7
130	98047	5.9926	2	3	5	7	10
131	24574	4.6703	1	3	4	6	8
132	174092	3.1532	1	2	3	4	6
133	6631	2.4803	1	1	2	3	5
134	30358	3.4496	1	2	3	4	6
135	8217	4.3269	1	2	3	5	8
136	1113	2.9695	1	1	2	4	5
138	209079	4.0464	1	2	3	5	8
139	67303	2.5774	1	1	2	3	5
140	107658	2.9719	1	1	2	4	5
141	81733	3.8534	1	2	3	5	7
142	36613	2.7911	1	1	2	3	5
143	143826	2.2585	1	1	2	3	4
144	78710	5.2279	1	2	4	7	10
145	6350	2.8698	1	1	2	4	6
146	10372	10.2717	5	7	9	12	17
147	1779	6.7482	4	5	7	8	10
148	146892	12.2593	5	7	10	15	22

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
149	14387	6.8504	4	5	6	8	10
150	23756	10.8870	4	6	9	13	19
151	4149	5.8894	2	3	5	8	10
152	4713	8.3393	4	5	7	10	14
153	1604	5.6359	3	4	5	7	8
154	34348	13.3603	4	7	10	16	25
155	4743	4.6884	1	2	4	6	9
156	2	18.0000	6	6	30	30	30
157	9287	5.3854	1	2	4	7	11
158	4110	2.6190	1	1	2	3	5
159	18320	4.9678	1	2	4	6	9
160	9765	2.6768	1	1	2	3	5
161	14601	4.0877	1	2	3	5	9
162	7065	2.0350	1	1	1	2	4
163	5	11.8000	4	4	11	13	22
164	5272	8.5277	4	5	7	10	15
165	1639	4.9555	2	3	5	6	8
166	3542	5.1256	2	3	4	6	9
167	2325	2.8456	1	2	2	4	5
168	1700	4.5476	1	2	3	6	9
169	843	2.5326	1	1	2	3	5
170	12774	11.2370	2	5	8	14	23
171	1004	4.8337	1	2	4	6	9
172	32993	7.1114	2	3	5	9	14
173	2135	3.9611	1	1	3	5	8
174	248770	4.9263	2	3	4	6	9
175	21672	3.0085	1	2	3	4	5
176	18343	5.4925	2	3	4	7	10
177	11138	4.5572	2	2	4	6	8
178	3486	3.2114	1	2	3	4	6
179	12485	6.4200	2	3	5	8	12
180	93327	5.4284	2	3	4	7	10
181	21330	3.5057	1	2	3	4	6
182	234973	4.3571	1	2	3	5	8
183	69893	3.0179	1	1	2	4	6
184	91	3.1648	1	2	2	4	7
185	4046	4.4881	1	2	3	6	9
187	870	3.9908	1	2	3	5	8
188	75257	5.5524	1	2	4	7	11
189	8618	3.2060	1	1	2	4	6
190	59	5.2712	1	2	4	7	11
191	10625	14.5648	4	7	11	18	29
192	831	6.7088	2	4	6	8	12
193	7334	12.5020	5	7	10	15	22
194	773	6.9288	3	4	6	9	12
195	7094	9.8105	4	6	8	12	17
196	1260	5.7254	2	4	5	7	10
197	25012	8.6285	3	5	7	10	15
198	6357	4.5945	2	3	4	6	8
199	2037	10.1733	3	5	8	14	20
200	1339	11.4593	2	4	8	14	23
201	1651	14.2938	4	6	11	18	29
202	28649	6.7440	2	3	5	8	13
203	29508	6.8400	2	3	5	9	14
204	53140	6.0853	2	3	5	7	11
205	22927	6.5500	2	3	5	8	13
206	1614	4.0694	1	2	3	5	8
207	35502	5.1397	1	2	4	6	10
208	9472	2.8992	1	1	2	4	6
209	362634	5.4336	3	4	5	6	8
210	141586	7.0191	3	4	6	8	12
211	26005	5.1476	3	4	5	6	8
212	13	3.7692	1	2	4	5	6
213	7496	8.4066	2	4	6	11	16
216	6117	9.8190	2	4	7	12	19
217	20587	12.9505	3	5	9	16	27
218	23700	5.3217	2	3	4	6	10
219	18252	3.2882	1	2	3	4	5
220	5	3.2000	1	1	3	4	7
223	18540	2.6177	1	1	2	3	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
224	7682	2.0607	1	1	2	3	4
225	5644	4.3556	1	2	3	5	9
226	5540	5.9224	1	2	4	7	12
227	4597	2.7261	1	1	2	3	5
228	2757	3.4345	1	1	2	4	8
229	1100	2.3827	1	1	2	3	5
230	2386	4.5306	1	2	3	5	9
231	10685	4.5647	1	2	3	5	9
232	496	3.8327	1	1	2	4	9
233	4903	7.6490	2	3	5	9	16
234	2258	3.6151	1	2	3	5	7
235	5348	5.3113	1	2	4	6	10
236	39380	5.1518	1	3	4	6	9
237	1593	3.6353	1	2	3	5	7
238	7851	8.8615	3	4	7	11	17
239	59615	6.4289	2	3	5	8	12
240	13635	6.6882	2	3	5	8	13
241	2905	3.9983	1	2	3	5	7
242	2634	6.7358	2	3	5	8	13
243	81633	4.8627	2	3	4	6	9
244	12420	4.9928	2	3	4	6	9
245	4361	3.7420	1	2	3	5	7
246	1273	3.9309	1	2	3	5	7
247	12240	3.4938	1	2	3	4	7
248	8122	4.6959	1	2	4	6	9
249	10840	3.6358	1	1	3	4	7
250	3561	4.2263	1	2	3	5	8
251	2210	2.9570	1	1	2	4	5
252	1	1.0000	1	1	1	1	1
253	19384	4.8629	1	3	4	6	9
254	9275	3.3439	1	2	3	4	6
255	2	3.5000	1	1	6	6	6
256	5517	5.1064	1	2	4	6	10
257	21137	2.9877	1	2	2	3	5
258	16396	2.1344	1	1	2	3	3
259	3772	3.0803	1	1	2	3	7
260	4464	1.5383	1	1	1	2	2
261	1967	2.2466	1	1	2	3	4
262	659	4.2231	1	1	3	6	9
263	27474	11.3931	3	5	8	14	22
264	3318	7.0530	2	3	5	8	14
265	4309	6.5331	1	2	4	8	13
266	2464	3.4054	1	1	2	4	7
267	250	4.6400	1	2	3	5	9
268	875	3.5783	1	1	2	4	7
269	9415	7.8786	2	3	6	10	16
270	2662	3.1480	1	1	2	4	7
271	22961	7.1545	3	4	6	9	13
272	5940	6.4330	2	3	5	8	12
273	1307	4.7980	1	2	4	6	8
274	2409	6.7430	1	3	5	8	14
275	210	3.5143	1	1	2	4	7
276	932	4.4678	1	2	4	6	8
277	81663	5.9066	2	3	5	7	10
278	24598	4.4950	2	3	4	6	8
279	12	5.0000	2	2	4	7	9
280	14156	4.3177	1	2	3	5	8
281	5945	3.1527	1	1	3	4	6
282	2	2.0000	2	2	2	2	2
283	5201	4.8029	1	2	4	6	9
284	1656	3.3255	1	2	3	4	6
285	5534	11.0193	3	5	8	13	21
286	2141	6.9650	3	4	5	8	13
287	6161	11.2446	3	5	8	13	22
288	1478	5.9303	2	3	5	6	9
289	5457	3.2448	1	1	2	3	7
290	8922	2.5158	1	1	2	3	4
291	66	1.7576	1	1	1	2	3
292	5029	10.7174	2	4	8	14	21
293	347	5.5476	1	2	4	7	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	82039	4.9200	1	2	4	6	9
295	3593	3.9585	1	2	3	5	7
296	235524	5.3934	2	3	4	7	10
297	32715	3.6521	1	2	3	4	7
298	91	3.7253	1	1	2	4	8
299	968	5.3657	1	2	4	7	10
300	16820	6.2855	2	3	5	8	12
301	2395	3.8113	1	2	3	5	7
302	7784	10.1382	5	6	8	12	18
303	19638	9.2247	4	5	7	10	16
304	12813	8.9904	2	4	7	11	18
305	2552	3.8985	1	2	3	5	7
306	10658	5.5019	1	2	3	7	12
307	2355	2.3996	1	1	2	3	4
308	9167	6.0165	1	2	4	8	13
309	3541	2.5945	1	1	2	3	5
310	26694	4.2835	1	2	3	5	9
311	7805	1.9543	1	1	1	2	4
312	1731	4.3437	1	1	3	6	9
313	587	2.3799	1	1	2	3	5
314	1	10.0000	10	10	10	10	10
315	28283	8.0413	1	2	5	10	18
316	93071	6.8024	2	3	5	9	14
317	787	2.8666	1	1	2	3	6
318	6194	6.1022	1	3	5	8	12
319	407	2.9902	1	1	2	4	6
320	177474	5.5698	2	3	4	7	10
321	23679	4.0416	2	2	3	5	7
322	82	4.1098	2	2	3	4	7
323	16931	3.2166	1	1	2	4	6
324	7513	1.9385	1	1	1	2	4
325	7409	3.9591	1	2	3	5	8
326	2192	2.7199	1	1	2	3	5
327	9	2.8889	1	1	2	3	4
328	759	3.7167	1	2	3	5	7
329	87	2.2644	1	1	1	3	4
331	43598	5.5769	1	3	4	7	11
332	4517	3.5603	1	1	3	5	7
333	306	4.9477	1	2	4	6	11
334	18572	4.9690	3	3	4	6	8
335	10338	3.7163	2	3	3	4	5
336	54082	3.6046	1	2	3	4	7
337	31770	2.2858	1	1	2	3	4
338	2767	4.7879	1	2	3	6	10
339	1987	4.1726	1	1	3	5	9
340	2	1.0000	1	1	1	1	1
341	4909	2.9589	1	1	2	3	6
342	1007	3.4518	1	2	2	4	7
344	3882	2.6285	1	1	1	3	5
345	1343	3.6389	1	1	2	4	8
346	4844	5.8179	1	3	4	7	11
347	365	3.1370	1	1	2	4	6
348	3181	4.2521	1	2	3	5	8
349	632	2.7658	1	1	2	4	5
350	6114	4.3999	2	2	4	5	8
352	638	3.6160	1	2	3	4	7
353	2816	6.9457	3	4	5	8	12
354	9926	5.7743	3	3	4	6	10
355	5640	3.4624	2	3	3	4	5
356	28862	2.6478	1	2	2	3	4
357	6330	9.0289	3	5	7	11	17
358	27373	4.3708	2	3	3	5	7
359	27990	2.9775	2	2	3	3	4
360	17843	3.1581	1	2	3	4	5
361	540	3.3259	1	1	2	3	7
363	3943	3.3109	1	2	2	3	6
364	1828	3.5656	1	1	2	5	8
365	2298	6.8903	1	2	5	9	14
366	4368	6.8116	1	3	5	8	14
367	506	2.8893	1	1	2	3	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
368	2895	6.3530	2	3	5	8	12
369	2588	3.0622	1	1	2	4	6
370	1154	5.4610	2	3	4	5	9
371	1157	3.4754	2	3	3	4	5
372	975	3.1549	1	2	2	3	5
373	3868	2.1171	1	1	2	2	3
374	147	3.0340	1	2	2	3	3
375	9	5.1111	2	2	3	9	10
376	214	2.9252	1	2	2	3	6
377	52	4.4808	1	2	3	6	9
378	168	2.5952	1	1	2	3	4
379	334	3.5868	1	1	2	3	7
380	87	2.0345	1	1	2	2	3
381	187	2.1283	1	1	1	2	4
382	40	1.2750	1	1	1	1	2
383	1460	3.7301	1	2	3	4	8
384	123	2.6585	1	1	2	3	6
385	1	2.0000	2	2	2	2	2
389	9	8.6667	1	3	7	10	15
390	13	6.0000	2	2	4	5	17
392	2513	10.3828	4	5	7	12	21
394	1805	7.0853	1	2	4	8	16
395	70948	4.7241	1	2	3	6	9
396	15	18.4667	1	2	5	11	15
397	18814	5.5200	1	2	4	7	11
398	18127	6.0414	2	3	5	7	11
399	1322	3.7239	1	2	3	5	7
400	7225	9.3664	2	3	6	12	20
401	6653	11.0137	2	4	8	14	23
402	1464	3.8907	1	1	3	5	9
403	38919	8.1409	2	3	6	10	17
404	3797	4.4464	1	2	3	6	9
406	3308	9.5299	2	4	7	12	20
407	634	4.3202	1	2	4	5	8
408	2667	7.5047	1	2	5	9	16
409	4644	5.8404	2	3	4	6	11
410	59252	3.4182	1	2	3	4	6
411	18	2.8889	1	1	2	2	6
412	24	2.3333	1	1	2	3	4
413	7781	7.4429	2	3	6	9	15
414	676	4.2219	1	2	3	5	8
415	45158	14.3432	4	7	11	18	28
416	230365	7.3967	2	4	6	9	14
417	41	5.9024	2	2	5	7	11
418	21184	6.1906	2	3	5	8	11
419	15269	5.0200	2	3	4	6	9
420	2680	3.9474	1	2	3	5	7
421	12113	3.9569	1	2	3	5	7
422	86	3.3372	1	2	2	5	7
423	10723	7.7520	2	3	6	9	15
424	1621	14.2961	2	5	10	18	29
425	15405	4.1352	1	2	3	5	8
426	4449	4.9020	1	2	3	6	10
427	1633	4.8010	1	2	3	6	10
428	940	7.1755	1	2	4	8	14
429	32769	7.1661	2	3	5	8	14
430	56829	8.7198	2	4	7	11	17
431	217	7.3088	1	3	5	9	13
432	409	5.2152	1	2	3	6	12
433	6811	3.2053	1	1	2	4	7
434	21537	5.1804	2	3	4	6	9
435	14552	4.4078	1	2	4	5	8
436	3322	13.9618	4	7	13	21	28
437	12779	9.2061	3	5	8	12	16
439	1138	7.7065	1	3	5	9	16
440	5155	8.9081	2	3	6	10	19
441	570	3.4333	1	1	2	4	7
442	16247	8.1177	1	3	6	10	17
443	3153	3.3321	1	1	2	4	7
444	3425	4.5007	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
445	1243	3.3628	1	2	3	4	6
446	1	2.0000	2	2	2	2	2
447	4257	2.5130	1	1	2	3	5
449	27905	3.7822	1	1	3	5	8
450	6171	2.0826	1	1	1	2	4
451	9	2.7778	1	1	1	4	5
452	22863	5.0341	1	2	4	6	10
453	3796	2.9236	1	1	2	4	6
454	3855	4.6905	1	2	3	6	9
455	758	2.7401	1	1	2	3	5
461	3047	4.4322	1	1	2	4	11
462	10348	12.4504	4	6	10	16	23
463	13983	4.4209	1	2	3	5	8
464	3556	3.3751	1	2	3	4	6
465	210	2.9095	1	1	1	3	5
466	1748	4.0955	1	1	2	4	9
467	1332	4.3949	1	1	2	4	7
468	61704	13.4718	3	6	10	17	27
471	12918	6.0694	3	4	5	7	10
473	8429	12.7713	2	3	7	18	33
475	109339	11.1900	2	5	9	15	22
476	5924	11.9158	3	6	10	15	22
477	28747	8.1623	1	3	6	11	17
478	123286	7.4571	1	3	5	9	15
479	18337	3.8430	1	2	3	5	7
480	400	26.7550	8	11	20	32	53
481	256	27.1133	16	20	24	32	43
482	6596	12.7329	4	7	10	15	23
483	41763	40.0560	14	21	33	50	73
484	391	14.6931	2	6	11	18	27
485	3471	9.5906	4	5	7	11	18
486	2244	12.3382	1	5	10	16	25
487	4210	7.3983	2	3	6	9	14
488	865	17.0532	4	7	12	22	35
489	14894	8.9049	2	4	6	11	19
490	4863	5.4148	1	2	4	7	11
491	11011	3.6593	2	2	3	4	6
492	2334	17.1418	4	5	12	27	36
493	56210	5.6284	1	2	5	7	11
494	25155	2.4285	1	1	2	3	5
495	125	16.9920	7	10	13	19	31
496	895	10.5821	4	6	8	13	20
497	21969	6.2886	2	3	5	7	11
498	12500	3.5058	1	2	3	5	6
499	36205	4.9604	2	2	4	6	9
500	36448	2.8726	1	2	2	4	5
501	1895	10.4391	4	6	8	12	19
502	468	6.5876	3	4	6	8	10
503	6317	4.2169	1	2	3	5	8
504	157	31.5669	8	14	25	39	57
505	171	5.8421	1	1	1	4	11
506	1130	16.7522	4	8	13	21	34
507	391	8.9668	2	4	7	12	17
508	1206	7.7355	2	3	5	9	16
509	462	4.8528	1	2	3	6	10
510	1006	6.8897	2	3	5	8	13
511	311	4.8135	1	2	3	6	9
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 1998

State	Urban	Rural
ALABAMA	0.373	0.446
ALASKA	0.503	0.731
ARIZONA	0.375	0.540
ARKANSAS	0.515	0.457
CALIFORNIA	0.363	0.481
COLORADO	0.467	0.565
CONNECTICUT	0.546	0.532
DELAWARE	0.506	0.488
DISTRICT OF COLUMBIA	0.521	.....
FLORIDA	0.384	0.389
GEORGIA	0.497	0.497
HAWAII	0.430	0.559
IDAHO	0.564	0.582
ILLINOIS	0.445	0.546
INDIANA	0.559	0.597
IOWA	0.513	0.640
KANSAS	0.429	0.644
KENTUCKY	0.496	0.519
LOUISIANA	0.442	0.496
MAINE	0.620	0.576
MARYLAND	0.765	0.818
MASSACHUSETTS	0.540	0.571
MICHIGAN	0.467	0.580
MINNESOTA	0.532	0.611
MISSISSIPPI	0.478	0.499
MISSOURI	0.441	0.516
MONTANA	0.524	0.569
NEBRASKA	0.482	0.639
NEVADA	0.320	0.584
NEW HAMPSHIRE	0.573	0.586
NEW JERSEY	0.436	.....
NEW MEXICO	0.466	0.510
NEW YORK	0.553	0.633
NORTH CAROLINA	0.523	0.461
NORTH DAKOTA	0.620	0.666
OHIO	0.533	0.576
OKLAHOMA	0.460	0.529
OREGON	0.546	0.624
PENNSYLVANIA	0.407	0.527
PUERTO RICO	0.481	0.569
RHODE ISLAND	0.571	.....
SOUTH CAROLINA	0.472	0.494
SOUTH DAKOTA	0.537	0.620
TENNESSEE	0.481	0.508
TEXAS	0.427	0.536
UTAH	0.538	0.635
VERMONT	0.615	0.577
VIRGINIA	0.476	0.499
WASHINGTON	0.599	0.662
WEST VIRGINIA	0.592	0.573
WISCONSIN	0.568	0.641
WYOMING	0.495	0.694

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1998

State	Ratio
ALABAMA	0.047
ALASKA	0.066
ARIZONA	0.043
ARKANSAS	0.054
CALIFORNIA	0.038
COLORADO	0.052
CONNECTICUT	0.042
DELAWARE	0.058

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1998—Continued

State	Ratio
DISTRICT OF COLUMBIA	0.040
FLORIDA	0.046
GEORGIA	0.049
HAWAII	0.045
IDAHO	0.054
ILLINOIS	0.042
INDIANA	0.059
IOWA	0.054
KANSAS	0.052
KENTUCKY	0.051
LOUISIANA	0.067
MAINE	0.040
MARYLAND	0.013
MASSACHUSETTS	0.056
MICHIGAN	0.046
MINNESOTA	0.056
MISSISSIPPI	0.054
MISSOURI	0.049
MONTANA	0.052
NEBRASKA	0.057
NEVADA	0.068
NEW HAMPSHIRE	0.066
NEW JERSEY	0.039
NEW MEXICO	0.047
NEW YORK	0.053
NORTH CAROLINA	0.047
NORTH DAKOTA	0.075
OHIO	0.053
OKLAHOMA	0.054
OREGON	0.055
PENNSYLVANIA	0.043
PUERTO RICO	0.054
RHODE ISLAND	0.033
SOUTH CAROLINA	0.053
SOUTH DAKOTA	0.061
TENNESSEE	0.056
TEXAS	0.052
UTAH	0.056
VERMONT	0.047
VIRGINIA	0.058
WASHINGTON	0.066
WEST VIRGINIA	0.056
WISCONSIN	0.052
WYOMING	0.056

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule 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. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

II. Objectives

The primary objective of the prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of deficit reduction and restraints on government spending in general.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 1999, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

IV. GME Payment to Nonhospital Providers

In the past, Medicare only paid hospitals for GME costs. Therefore, FQHCs, RHCs and Medicare+Choice organizations may have been reluctant to train many residents since they would incur costs in training the residents but would not be reimbursed for those costs by Medicare. Under this proposed regulation, where the non-hospital site incurs all or substantially all of the costs of the training at that site, Medicare will reimburse

the provider for Medicare's share of the reasonable costs of the training. The proposal to allow for payments directly to these non-hospital sites for the costs of training residents in approved programs will facilitate more training of residents in settings that will be similar to the settings that many of those residents will ultimately practice after their training is completed. Additionally, this could result in an increase in the number of physicians practicing in underserved areas.

In addition, hospitals are currently allowed to count residents, working in nonhospital sites in their count of residents and the hospital would be paid GME payments, if it paid for all or substantially all of the costs of the program at the non-hospital site. Previously the regulation defined the statutory requirement of ''all or substantially all'' to mean at least the residents'' salaries and fringe benefits. Under the proposal we would redefine ''all or substantially all'' of the costs of the program at the nonhospital site to also include the GME portion of the teaching physicians' salaries and fringe benefits. This will require hospitals to incur more of the costs of the training at the nonhospital site in order to receive both direct and indirect GME payments for those residents.

Section 4625 of the Balanced Budget Act, which provides for direct graduate medical education payments to nonhospital providers, would have minimal impact in the context of total graduate medical education costs. We believe that the most significant impact resulting from section 4625 will be the movement of resident training from the inpatient setting to the nonhospital setting. We expect that such a shift in the site where resident training occurs will result in little if any additional cost to Medicare. In addition to the expected shift in training from the inpatient setting to the nonhospital setting, in relatively few cases, section 4625 could result in additional resident training being paid by Medicare. However, Medicare's share of costs incurred in those nonhospital sites based on Medicare utilization is often generally low, so we expect the impact of the cost of training of any additional residents to be negligible.

V. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 45 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of March 1998, we have included 4,956 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our proposed policy changes on these hospitals are discussed below.

VI. Impact on Excluded Hospitals and Units

As of March 1998, there were 1,082 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, there were 2,393 psychiatric and rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1999 would be between 0 and 2.5 percent, depending on the hospital's costs in relation to its limit.

The impact on excluded hospitals and units of the proposed update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VII. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We estimate the total payment impact of these changes on FY 1999 payments compared to FY 1998 payments, to be approximately a $400 million reduction. We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1997 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1997 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 1999 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of implementing the expanded transfer definition enacted by section 4407 of the BBA, which counts as a transfer any discharge from one of 10 DRGs if upon discharge the patient is admitted to an excluded hospital or distinct part unit or a skilled nursing facility, or is provided home health care that is related to the hospitalization within 3 days of the date of discharge.
- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1995 data).
- The effects of two proposed changes to the wage index: (1) including the costs associated with Part A physician costs under contract; and (2) removing the overhead costs related to departments excluded from the wage data used to calculate the wage index (for example, skilled nursing facilities and distinct part units).
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 1999.

• The total change in payments based on FY 1999 policies relative to payments based on FY 1998 policies.

To illustrate the impacts of the FY 1999 proposed changes, our analysis begins with a FY 1999 baseline simulation model using: The FY 1998 GROUPER (version 15.0); the FY 1998 wage index; the transfer definition prior to implementation of section 4407 of the BBA; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 1999 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1998 to FY 1999. Four factors have significant impacts here. First is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1999 using the most recently forecasted hospital market basket increase for FY 1999 of 2.6 percent minus 1.9 percentage points. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs), essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes), and Medicare-dependent, small rural hospitals (MDHs) is equal to the market basket increase of 2.6 percent minus 1.9 percentage points (for an update of 0.7 percent).

A second significant factor impacting changes in hospitals' payments per case from FY 1998 to FY 1999 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1998 that are no longer reclassified in FY 1999 may have a negative payment impact going from FY 1998 to FY 1999; conversely, hospitals not reclassified in FY 1998 that are reclassified in FY 1999 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1998 will be 5.4 percent of actual total DRG payments. When the FY 1998 final rule was published, we projected FY 1998 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the slightly higher than expected outlier payments during FY 1998 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 1998 payments per case to estimated FY 1999 payments per case.

Fourth, payments per case in FY 1999 are reduced from FY 1998 for hospitals that receive the indirect medical education (IME) or the disproportionate share (DSH) adjustments. Section 1886(d)(5)(B)(ii) of the Act provides that the IME adjustment is reduced from approximately a 7.0 percent increase for every 10 percent increase in a hospital's resident-to-bed ratio in FY 1998, to a 6.5 percent increase in FY 1999. Similarly, in accordance with section 1886(d)(5)(F)(ix) of the Act, the DSH adjustment for FY 1999 is reduced by 2 percent from what would otherwise have been paid, compared to a 1 percent reduction for FY 1998.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,956 hospitals included in the analysis. This is 132 fewer hospitals than were included in the impact analysis in the FY 1998 final rule with comment period (62 FR 46119).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,792 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,588 hospitals located in large urban areas (populations over 1 million), and 1,204 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,164 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 1999 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show the numbers of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,877, 1,681, 1,196, and 2,079, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment), receive DSH payments, or some combination of these two adjustments. There are 3,875 nonteaching hospitals in our analysis, 841 teaching hospitals with fewer than 100 residents, and 240 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next row separately examines hospitals that available data show may qualify under section 4401(b) of the BBA for the special temporary relief provision, which grants an additional 0.3 percent update to the standardized amounts (in addition to the 0.7 percent update other hospitals would receive during FY 1999), resulting in a 1.0 percent update for this category of hospitals. To be eligible, a hospital must not be an MDH, nor may it receive either IME or DSH payments. It must also experience a negative margin on its operating prospective payments during FY 1999. We estimated eligible hospitals based on whether they had a negative operating margin on their FY 1995 cost report (latest available data). Finally, to qualify, a hospital must be located in a State where the aggregate FY 1995 operating prospective payments were less than the aggregate associated costs for all of the non-IME, non-DSH, non-MDH hospitals in the State. There are 356 hospitals in this row.

The next four rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), MDHs, and EACHs), as well as rural hospitals not receiving a special payment designation. The RRCs (137), SCH/EACHs (633), MDHs (351), and SCH/EACH and RRCs (54) shown here were not reclassified for purposes of the standardized amount. There is one SCH that will be reclassified for the standardized amount in FY 1999 that, therefore, is not included in these rows. There are six EACHs included in our analysis and three EACH/RRCs.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1995 Medicare cost report files, if available (otherwise FY 1994 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 95 hospitals. For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for both FY 1998 and FY 1999, or for either of those 2 years, by urban/rural status. The next rows illustrate the overall number of FY 1999 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1]	PAC tran. provision[2]	DRG recalib.[3]	New wage data[4]	Contract phys. pt a costs[5]	Allocated overhead costs[6]	DRG & WI changes[7]	MGCRB recl- assification[8]	All FY 99 changes[9]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(BY GEOGRAPHIC LOCATION):									
ALL HOSPITALS	4,956	−0.6	0.1	0.1	0.0	−0.1	0.0	0.0	−0.7
URBAN HOSPITALS	2,792	−0.7	0.1	0.0	0.0	−0.2	−0.2	−0.4	−1.1
LARGE URBAN	1,588	−0.7	0.1	−0.3	0.0	−0.2	−0.5	−0.4	−1.4
OTHER URBAN	1,204	−0.6	0.1	0.4	0.0	−0.2	0.2	−0.3	−0.5
RURAL HOSPITALS	2,164	−0.4	0.1	0.9	−0.1	0.3	1.3	2.4	1.5
BED SIZE (URBAN):									
0–99 BEDS	690	−0.8	0.2	−0.3	0.0	−0.1	−0.3	−0.5	−0.7
100–199 BEDS	936	−0.8	0.2	−0.2	0.0	−0.1	−0.3	−0.4	−1.0
200–299 BEDS	566	−0.7	0.1	−0.1	0.0	−0.1	−0.3	−0.3	−0.9
300–499 BEDS	448	−0.6	0.1	0.0	0.0	−0.2	−0.3	−0.5	−1.2
500 OR MORE BEDS	152	−0.5	0.1	0.3	0.0	−0.3	0.1	−0.2	−1.2
BED SIZE (RURAL):									
0–49 BEDS	1,135	−0.3	0.1	0.9	−0.1	0.5	1.3	−0.1	1.3
50–99 BEDS	635	−0.4	0.1	0.8	−0.1	0.3	1.1	0.9	1.1
100–149 BEDS	229	−0.5	0.1	0.8	−0.1	0.4	1.3	3.3	1.3
150–199 BEDS	91	−0.5	0.1	1.0	−0.1	0.3	1.5	3.9	2.7
200 OR MORE BEDS	74	−0.4	0.1	1.0	0.0	0.2	1.4	4.6	1.6
URBAN BY CENSUS DIVISION:									
NEW ENGLAND	152	−0.7	0.1	−2.4	−0.1	0.1	−2.7	0.1	−3.5
MIDDLE ATLANTIC	425	−0.4	0.2	0.4	0.3	−0.2	0.6	−0.5	−0.5
SOUTH ATLANTIC	413	−0.6	0.1	0.8	−0.1	−0.2	0.6	−0.6	−0.3
EAST NORTH CENTRAL	475	−0.8	0.1	0.0	−0.1	−0.4	−0.6	−0.3	−1.5
EAST SOUTH CENTRAL	159	−0.6	0.1	0.5	−0.1	−0.4	0.0	−0.5	−0.7
WEST NORTH CENTRAL	186	−0.7	0.0	0.9	0.0	0.1	1.0	−0.6	0.1
WEST SOUTH CENTRAL	350	−0.9	0.1	−1.1	0.1	−0.2	−1.4	−0.1	−2.0
MOUNTAIN	126	−0.8	0.1	0.4	0.2	−0.2	0.5	−0.6	−0.3
PACIFIC	458	−0.8	0.1	−0.5	−0.1	0.0	−0.7	−0.3	−1.4
PUERTO RICO	48	−0.2	0.3	0.8	−0.3	−0.3	0.3	−0.5	0.3
RURAL BY CENSUS DIVISION:									
NEW ENGLAND	53	−0.4	0.0	1.3	0.1	0.0	1.4	0.6	−0.4
MIDDLE ATLANTIC	80	−0.3	0.1	0.9	0.1	0.0	1.2	1.2	1.1
SOUTH ATLANTIC	286	−0.4	0.2	0.8	−0.1	0.3	1.1	3.3	2.0
EAST NORTH CENTRAL	284	−0.5	0.1	1.0	−0.3	0.3	1.2	1.9	1.5
EAST SOUTH CENTRAL	269	−0.4	0.1	1.5	−0.1	0.3	1.9	2.5	2.0

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1]	PAC tran. provision[2]	DRG recalib.[3]	New wage data[4]	Contract phys. pt a costs[5]	Allocated overhead costs[6]	DRG & WI changes[7]	MGCRB recl- assification[8]	All FY 99 changes[9]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
WEST NORTH CENTRAL ..	499	−0.4	0.0	1.1	0.0	0.7	1.9	2.1	1.8
WEST SOUTH CENTRAL ..	341	−0.5	0.1	0.3	−0.1	0.5	0.8	3.1	0.7
MOUNTAIN ...	206	−0.3	0.0	0.3	−0.1	0.5	0.8	1.6	1.2
PACIFIC	141	−0.6	0.1	0.4	−0.1	0.4	1.0	2.3	1.1
PUERTO RICO	5	−0.4	0.1	2.3	0.1	−0.3	2.2	1.9	0.8
(BY PAYMENT CATEGORIES):									
URBAN HOSPITALS	2,877	−0.7	0.1	0.0	0.0	−0.2	−0.2	−0.3	−1.0
LARGE URBAN	1,681	−0.7	0.1	−0.3	0.0	−0.2	−0.4	−0.3	−1.3
OTHER URBAN	1,196	−0.6	0.1	0.4	0.0	−0.2	0.2	−0.4	−0.5
RURAL HOSPITALS	2,079	−0.4	0.1	0.9	−0.1	0.4	1.3	2.0	1.4
TEACHING STATUS:									
NON-TEACHING	3,875	−0.7	0.1	0.2	−0.1	0.0	0.2	0.3	−0.1
LESS THAN 100 RES. ...	841	−0.7	0.1	0.0	0.0	−0.2	−0.2	−0.3	−0.9
100+ RESIDENTS	240	−0.6	0.1	0.0	0.1	−0.2	−0.1	−0.3	−1.7
DISPROPORTIONATE SHARE HOSPITALS (DSH):									
NON-DSH	3,074	−0.6	0.1	0.1	0.0	−0.1	0.1	0.3	−0.4
URBAN DSH:									
100 BEDS OR MORE	1,402	−0.7	0.1	0.0	0.0	−0.2	−0.2	−0.3	−1.1
FEWER THAN 100 BEDS ..	93	−0.7	0.2	−0.2	−0.1	−0.1	−0.3	−0.5	−0.7
RURAL DSH:									
SOLE COMMUNITY (SCH) ..	156	−0.2	0.1	0.8	−0.1	0.2	1.1	−0.1	1.3
REFERRAL CENTERS (RRC) ..	47	−0.5	0.2	1.3	−0.1	0.3	1.9	4.8	2.9
OTHER RURAL DSH HOSP.:									
100 BEDS OR MORE	64	−0.6	0.2	1.2	−0.1	0.4	1.8	1.3	0.8
FEWER THAN 100 BEDS ..	120	−0.3	0.1	1.4	−0.1	0.4	1.8	0.0	1.7
URBAN TEACHING AND DSH:									

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1]	PAC tran. provision[2]	DRG recalib.[3]	New wage data[4]	Contract phys. pt a costs[5]	Allocated overhead costs[6]	DRG & WI changes[7]	MGCRB recl- assification[8]	All FY 99 changes[9]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
BOTH TEACHING AND DSH	700	−0.7	0.1	0.0	0.0	−0.2	−0.2	−0.4	−1.4
TEACHING AND NO DSH	328	−0.6	0.0	0.0	0.0	−0.3	−0.2	−0.1	−1.0
NO TEACHING AND DSH	795	−0.8	0.2	0.0	−0.1	−0.1	−0.1	−0.2	−0.6
NO TEACHING AND NO DSH	1,054	−0.7	0.1	−0.2	0.0	−0.1	−0.3	−0.3	−0.6
SPECIAL UPDATE HOSPITALS (UNDER SEC. 4401(b) OF PUBLIC LAW 105–33)	356	−0.6	0.2	0.1	−0.1	−0.1	0.1	0.3	−0.3
RURAL HOSPITAL TYPES:									
NONSPECIAL STATUS HOSPITALS	904	−0.5	0.2	1.1	−0.1	0.5	1.6	1.1	1.0
RRC	137	−0.6	0.1	1.2	0.0	0.4	1.8	5.6	2.5
SCH/EACH	633	−0.2	0.0	0.4	0.0	0.2	0.6	0.1	0.8
MDH	351	−0.3	0.1	1.1	−0.1	0.5	1.5	0.4	1.3
SCH/EACH AND RRC	54	−0.2	0.0	0.3	0.0	0.1	0.4	1.5	1.3
TYPE OF OWNERSHIP:									
VOLUNTARY	2,859	−0.6	0.1	0.1	0.0	−0.1	−0.1	−0.1	−0.8
PROPRIETARY	671	−0.9	0.2	0.1	−0.1	−0.1	−0.1	0.1	−0.9
GOVERNMENT	1,331	−0.5	0.1	0.3	−0.1	0.0	0.3	0.3	−0.3
UNKNOWN	95	−0.7	0.2	0.3	−0.1	−0.1	0.2	−0.2	−0.7
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:									
0–25	249	−0.7	0.2	−0.7	−0.1	−0.1	−1.0	0.1	−1.6
25–50	1,267	−0.7	0.1	0.0	0.0	−0.1	−0.2	−0.2	−1.2
50–65	1,975	−0.6	0.1	0.2	0.0	−0.1	0.1	0.1	−0.4
OVER 65	1,370	−0.6	0.1	0.3	0.0	0.0	0.4	0.0	0.0
UNKNOWN	95	−0.7	0.2	0.3	−0.1	−0.1	0.2	−0.2	−0.7
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:									
RECLASSIFICATION STATUS DURING FY 98 AND FY 99:									
RECLASSIFIED DURING BOTH FY98 AND FY99	311	−0.5	0.1	0.6	−0.1	0.1	0.8	6.6	−0.1
URBAN	70	−0.5	0.1	0.2	−0.1	−0.3	−0.1	5.4	−0.5
RURAL	241	−0.5	0.1	1.0	−0.1	0.4	1.5	7.5	0.2
RECLASSIFIED DURING FY99 ONLY	178	−0.5	0.1	0.8	−0.1	0.2	1.0	4.0	4.7

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1]	PAC tran. provision[2]	DRG recalib.[3]	New wage data[4]	Contract phys. pt a costs[5]	Allocated overhead costs[6]	DRG & WI changes[7]	MGCRB recl- assification[8]	All FY 99 changes[9]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
URBAN	25	−0.5	0.1	0.4	−0.1	0.0	0.4	3.1	1.9
RURAL	153	−0.5	0.1	1.0	−0.1	0.3	1.3	4.4	6.1
RECLASSIFIED DURING FY98 ONLY	111	−0.7	0.1	0.6	0.0	−0.2	0.5	−0.5	−3.1
URBAN	38	−0.7	0.1	0.5	0.1	−0.3	0.2	−0.6	−2.2
RURAL	73	−0.4	0.1	0.9	−0.1	0.4	1.3	−0.5	−6.1
FY 99 RECLASSIFICATIONS:									
ALL RECLASSIFIED HOSP.	489	−0.5	0.1	0.7	−0.1	0.1	0.9	5.7	1.6
STAND. AMOUNT ONLY	94	−0.6	0.1	0.6	0.1	−0.3	0.5	1.0	−0.3
WAGE INDEX ONLY	281	−0.5	0.1	0.5	−0.1	0.3	0.8	6.6	−0.9
BOTH	47	−0.6	0.2	0.9	−0.1	−0.4	0.6	3.8	−1.6
NON-RECLASSIFIED	4,507	−0.7	0.1	0.1	0.0	−0.1	−0.1	−0.4	−0.7
ALL URBAN RECLASS.	95	−0.5	0.1	0.3	−0.1	−0.2	0.0	4.7	0.2
STAND. AMOUNT ONLY	25	−0.4	0.2	0.9	0.1	−0.4	0.7	0.7	0.0
WAGE INDEX ONLY	45	−0.5	0.1	0.0	−0.1	0.1	−0.1	6.5	0.6
BOTH	25	−0.5	0.1	0.6	−0.2	−0.6	−0.1	2.9	−0.5
NON-RECLASSIFIED	2,670	−0.7	0.1	0.0	0.0	−0.2	−0.2	−0.6	−1.1
ALL RURAL RECLASS.	394	−0.5	0.1	1.0	−0.1	0.4	1.4	6.3	2.5
STAND. AMOUNT ONLY	57	−0.5	0.1	1.1	−0.2	0.3	1.5	5.1	2.4
WAGE INDEX ONLY	309	−0.5	0.1	0.9	−0.1	0.4	1.4	6.1	2.3
BOTH	28	−0.6	0.1	1.1	−0.1	0.3	1.6	9.2	3.8
NON-RECLASSIFIED	1,770	−0.3	0.1	0.9	−0.1	0.3	1.2	−0.5	0.8
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	27	−0.5	0.1	−0.9	0.2	−0.3	−0.9	0.7	−0.6

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1997, and hospital cost report data are from reporting periods beginning in FY 1994 and FY 1995.

[2] This column displays the impact of the change enacted by section 4407 of the BBA, which defines discharges from 1 of 10 DRGs to postacute care as transfers. Under our proposed policy, 3 of the 10 DRGs would be paid under an alternative methodology where they would receive 50 percent of the full DRG amount on the first day and 50 percent of the current per diem transfer payment amount for each remaining day of the stay. The remaining seven DRGs would be paid using our current transfer payment methodology.

[3] This column displays the payment impact of the recalibration of the DRG weights based on FY 1997 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

[4] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1995 cost reports.

[5] This column displays the impact of adding contract Part A physician costs to the wage data.

[6] This column illustrates the payment impact of removing the overhead costs allocated to departments where the directly assigned costs are already excluded from the wage index calculation (for example, SNFs and distinct part units).

[7] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 2, 3, 4, and 5, and the FY 1999 budget neutrality factor of 0.999227.

[8] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1999 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1999. Reclassification for prior years has no bearing on the payment impacts shown here.

[9] This column shows changes in payments from FY 1998 to FY 1999. It incorporates all of the changes displayed in columns 1, 6, and 7 (the changes displayed in columns 2, 3, 4 and 5 are included in column 6). It also displays the impact of the FY 1999 update, changes in hospitals' reclassification status in FY 1999 compared to FY 1998, the difference in outlier payments from FY 1998 to FY 1999, and the reductions to payments through the IME and DSH adjustments taking effect during FY 1999. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

B. Impact of the Proposed Implementation of the Expanded Transfer Definition (Column 1)

Section 1886(d)(5)(J) of the Act (added by section 4407 of the BBA) requires the Secretary to select 10 DRGs for which discharges (from any one of these DRGs) to a postacute care provider will be treated as a transfer beginning with discharges on or after October 1, 1998. Column 1 shows the impact of this provision.

Although the expanded definition encompasses only 10 DRGs, they were selected, in accordance with the statute, based upon their large and disproportionate volume of cases receiving postacute care. We estimate that approximately 25 percent of all cases receiving follow-up postacute care come from these 10 DRGs. Therefore, the overall payment impact of this change is significant (a 0.6 percent decrease in payments per case).

The 10 DRGs that we are proposing to include under this provision are identified in section V.A. of the preamble to this proposed rule. In addition to selecting 10 DRGs, the statute authorizes the Secretary to develop an alternative transfer payment methodology for DRGs where a substantial portion of the costs of the cases occur very early in the stay. This is particularly likely to happen in some surgical DRGs because of the high cost of the surgical procedure. Based on our analysis comparing the costs per case for these cases with payments under our current transfer payment methodology, we are proposing to pay the current transfer per diem for all DRGs except DRGs 209, 210, and 211. For those three DRGs, the alternative payment methodology we are proposing is 50 percent of the full DRG payment amount for the first day of the stay, plus 50 percent of the current per diem transfer payment for each remaining day, up to the full DRG payment.

To simulate the impact of these proposed policies, we adjusted hospitals' transfer-adjusted discharges and case-mix index values (using version 15 of the GROUPER) to reflect the impact of this expansion in the transfer definition. The transfer-adjusted discharge amount is calculated one of two ways, depending on the transfer payment methodology. Under our current transfer payment methodology, and for all but the three DRGs receiving special payment consideration, this adjustment is made simply by adding one to the length of stay and dividing that amount by the geometric mean length of stay for the DRG (not to exceed 1.0). For example, a transfer after 3 days from a DRG with a geometric mean length of stay of 6 days would have a transfer-adjusted discharge weight of 0.667 ((3+1)/6).

For transfers from any one of the three DRGs receiving the alternative payment methodology, the transfer-adjusted discharge amount is 0.5 (to reflect that these cases receive half the full DRG amount the first day), plus one-half of the result of dividing one plus the length of stay prior to transfer by the geometric mean length of stay for the DRG. As with the above adjustment, the result is equal to the lesser of the transfer-adjusted DRG or 1.

The transfer-adjusted case-mix index values are calculated by summing the transfer-adjusted DRG weights and dividing by the transfer-adjusted discharges. The transfer-adjusted DRG weights are calculated by multiplying the DRG weight by the lesser of 1 or the transfer-adjusted discharge for the case, divided by the geometric mean length of stay for the DRG. In this way, simulated payments per case can be compared before and after the change to the transfer policy.

This change has the greatest impact among urban hospitals (0.7 percent decrease). Among urban hospitals, smaller hospitals (under 200 beds) are most affected, with a 0.8 percent reduction in payments. For urban hospitals grouped by census division, Puerto Rico and the Middle Atlantic division have the smallest negative impacts, 0.2 and 0.4 percent decreases, respectively. The Middle Atlantic division has traditionally had the longest average lengths of stay, therefore, it is not surprising that the impact is smallest here. Transfer cases with a length of stay more than the (geometric) mean length of stay minus one day do not experience any payment impact under this provision. (Full payment is reached one day prior to the mean length of stay due to the double per diem paid for the first day under our current transfer payment methodology.) The small impact in Puerto Rico would indicate that these hospitals also are not discharging patients to postacute care early in the stay.

Rural hospitals experience a smaller payment impact overall, especially the smallest rural hospitals: Those with fewer than 50 beds (a 0.3 percent decrease). The smallest impacts among rural census divisions are in the Middle Atlantic and the Mountain. The largest rural impact is in the Pacific division, with a 0.6 percent decrease. This change is consistent with the shorter lengths of stay in this geographic region.

The largest negative impact is a 0.9 percent decrease in payments, observed among urban West South Central hospitals, and proprietary hospitals. The smallest negative impact besides urban Puerto Rico hospitals occurs in SCHs (0.2 percent decrease). Those SCHs paid based on their hospital-specific amount would see no impact related to this change, since there is no transfer adjustment made to the hospital-specific amount.

C. Impact of the Proposed Changes to the DRG Classifications and Relative Weights (Column 2)

In column 2 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this proposed rule. Section 1886(d)(4)(C)(I) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 1998 DRG relative weights (GROUPER version 15) to aggregate payments using the proposed FY 1999 DRG relative weights (GROUPER version 16). Overall, payments increase by 0.1 percent due to the DRG changes, although this is prior to applying the budget neutrality factor for DRG and wage index changes (see column 6). Consistent with the minor changes we are proposing for the FY 1999 GROUPER, the redistributional impacts of DRG reclassifications and recalibration across hospital groups are very small (a 0.1 percent increase for large and other urban hospitals, as well as for rural hospitals). Within hospital categories, the net effects for urban hospitals are small positive changes for all hospitals (a 0.2 percent increase for hospitals with fewer than 200 beds and a 0.1 percent increase for larger hospitals). Among rural hospitals, all hospital categories experience an increase of 0.1 percent.

The breakdowns by urban census division show that the increase among urban hospitals is spread across all census categories, with the largest increase (0.3 percent) for hospitals in Puerto Rico. For rural hospitals, there is no impact (that is, a 0.0 percent change) for hospitals in the New England, West North Central, and Mountain census divisions. All other divisions experience a 0.1 percent increase.

This pattern of small increases or no change applies to all other hospital categories. Overall, we attribute this change to the increasing severity of illness of

hospital inpatients. That is, as greater numbers of less acutely ill patients are treated outside the inpatient setting, the acuity of the remaining hospital inpatients increases. Although, in the past, this effect was seen more clearly in large urban and very large rural hospitals, which often had more outpatient settings available for patient treatment, hospitals in all areas now appear to be able to take advantage of this practice. Of course, in general, these positive impacts are very minor, with virtually no hospital group experiencing more than a 0.2 percent increase.

D. Impact of Updating the Wage Data (Column 3)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 1999 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 3 shows the percentage changes in payments when going from a model using the FY 1998 wage index based on FY 1994 wage data before geographic reclassifications to a model using the FY 1999 prereclassification wage index based on FY 1995 wage data.

The wage data collected on the FY 1995 cost reports includes, for the first time, contract labor costs and hours for top management positions as allowable in the wage index calculation. In addition, the changes to wage-related costs associated with hospital and home office salaries that were discussed in the September 1, 1994 final rule (59 FR 45355) are reflected in the FY 1995 data. These changes are reflected in column 3, as well as other year-to-year changes in hospitals' labor costs.

The results indicate that the new wage data have an overall impact of a 0.1 percent increase in hospital payments (prior to applying the budget neutrality factor, see column 6). Rural hospitals especially appear to benefit from the update. Their payments increase by 0.9 percent. These increases are attributable to relatively large increases in the wage index values for the rural areas of particular States; South Dakota, Hawaii, Mississippi, Wyoming, New Hampshire, and Iowa all had increases greater than 6 percent in their prereclassification wage index values.

Urban hospitals as a group are not significantly affected by the updated wage data. The gains of hospitals in other urban areas (0.4 percent increase) are offset by decreases among hospitals in large urban areas (0.3 percent decrease). The negative impact among large urban areas appears to be largely due to a 5.8 percent decrease in the wage index values for the Boston MSA. This impact is especially evident in the 2.4 percent decrease for urban New England hospitals. Urban West South Central hospitals experience a 1.1 percent decrease, largely due to 11 Texas MSAs with FY 1999 wage indexes that fall by more than 7 percent. These appear to be primarily related to large changes in the average hourly wages of individual hospitals in MSAs with only a few hospitals. We would point out that the wage data used for the proposed wage index is not final, and we understand that many hospitals have submitted revision requests. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions are likely to affect the impacts shown in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year. We anticipate that all these verifications will be completed when we calculate the final FY 1999 wage index.

The largest increases are seen in the rural census divisions. Rural Puerto Rico experiences the greatest positive impact, 2.3 percent. Hospitals in three other census divisions receive positive impacts over 1.0 percent; East South Central at 1.5 percent, New England at 1.3 percent, and West North Central at 1.1 percent. We believe these positive impacts of the new wage data for rural hospitals stem from the expansion of the contract labor definition, specifically to include certain management categories. On average, the hourly cost of contract labor increased for rural hospitals by 5.9 percent. Among urban hospitals, the increase was 4.2 percent.

E. Impact of Including Contract Physician Part A Costs (Column 4)

As discussed in section III.C.1 of the preamble, we began collecting separate wage data for both direct and contract physician Part A services on the FY 1995 cost report. This change was made in order to address any potential inequity of including only salaried Part A physician costs in the wage index while some States had laws prohibiting their hospitals from employing physicians directly (forcing hospitals to contract with physicians for administrative services). Based on our analysis, we are proposing to include contract physician Part A costs in the wage index calculation.

Column 4 shows the payment impacts of including these data. Although only two States currently maintain the prohibition against hospitals directly employing physicians (Texas and California), many hospitals in other States reported these costs as well. Thus, the impacts of this proposed change extend well beyond Texas and California. In fact, the urban Middle Atlantic census division shows the largest positive impact from this change (0.3 percent).

In general, hospitals in other areas experience either no changes due to this proposed policy, or small (0.1 percent) increases or decreases. However, urban hospitals in Puerto Rico and rural hospitals in the East North Central census division experience 0.3 percent decreases. The negative rural East North Central impact is largely due to a negative impact of this change on the rural Wisconsin wage index.

As noted above, the data used to prepare the proposed FY 1999 wage index are subject to revision, and we understand that many hospitals requested changes to their contract physician Part A costs prior to the March 9 deadline for all requests for wage data changes to be submitted to the fiscal intermediaries. The extent of these requests and the number which are approved by the fiscal intermediaries may change the impacts in the final rule.

F. Impact of Removing Overhead Costs of Excluded Areas (Column 5)

Prior years' wage index calculations have removed the direct wages and hours associated with certain subprovider components excluded from the prospective payment system; however, the overhead costs associated with these excluded components have not been removed. We revised the FY 1995 cost report to allow hospitals to report separately overhead salaries and hours, and we are proposing to remove the overhead costs and hours allocated to areas of the hospital excluded from the wage index calculation.

Column 5 displays the impacts on FY 1999 payments per case of implementing this change. The overall impact is a 0.1 percent decline in payments; however, once again (as with the impacts of the FY 1995 data), the impact diverges along urban and rural lines. Urban hospitals lose 0.2 percent as a result of removing these overhead costs, while rural hospitals gain 0.3 percent. Among rural hospitals by bed size, the smallest rural hospitals benefit the most, with a 0.5 percent increase for rural hospitals with fewer than 50 beds.

Hospitals in the rural West North Central census division experience the largest percentage increase (0.7 percent). The largest negative impacts are in Puerto Rico (urban and rural), and urban East North Central and urban East South Central.

The combined wage index changes in Table I are determined by summing the individual impacts in columns 3, 4, and 5. For example, the rural West North Central census division gains 1.1 percent from the new wage data, and 0.7 percent from removing the overhead costs allocated to excluded areas. Therefore, the combined impact of the FY 1999 wage index for these hospitals is a 1.8 percent increase.

The following chart compares the shifts in wage index values for labor market areas for FY 1999 relative to FY 1998. This chart demonstrates the impact of the proposed changes for the FY 1999 wage index relative to the FY 1998 wage index. The majority of labor market areas (282) experience less than a 5 percent change. A total of 54 labor market areas experience an increase of more than 5 percent with 13 having an increase greater than 10 percent. A total of 34 areas experience decreases of more than 5 percent (all urban). Of those, 6 decline by 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 1998	FY 1999
Increase more than 10 percent	2	13
Increase more than 5 percent and less than 10 percent	24	41
Increase or decrease less than 5 percent	334	282

Percentage change in area wage index values	Number of labor market areas	
	FY 1998	FY 1999
Decrease more than 5 percent and less than 10 percent	9	28
Decrease more than 10 percent	1	6

Among urban hospitals, 164 would experience an increase of more than 5 percent and 29 more than 10 percent. More rural hospitals have increases greater than 5 percent (360), but none greater than 10 percent. On the negative side, 268 urban hospitals but no rural hospitals have decreases in their wage index values of at least 5 percent (30 of the urban hospitals have decreases greater than 10 percent). The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	29	0
Increase more than 5 percent and less than 10 percent	164	360
Increase or decrease less than 5 percent	2440	1924
Decrease more than 5 percent and less than 10 percent	238	0
Decrease more than 10 percent	30	0

G. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 6)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared aggregate payments using the FY 1998 DRG relative weights and wage index to aggregate payments using the FY 1999 DRG relative weights and wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.999227. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 6. The 0.0 percent impact for All Hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 2, 3, 4, and 5, minus approximately 0.1 percent attributable to the budget neutrality factor. There may, of course, be some variation of plus or minus 0.1 percent due to rounding.

H. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 7 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1999. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural hospitals reclassified for purposes of the standardized amount qualify to be treated as urban for purposes of the DSH adjustment.

Beginning in 1998, by February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. (In previous years, these determinations were made by March 30.) The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both or for FYS 1999–2001 for purposes of qualifying for a DSH adjustment or to receive a higher DSH payment.

The proposed FY 1999 wage index values incorporate all of the MGCRB's reclassification decisions for FY 1999. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of February 27, 1998. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 1999.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.994019 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this proposed rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.4 percent, while payments to urban hospitals decline 0.4 percent. Hospitals in other urban areas see a decrease in payments of 0.3 percent, while large urban hospitals lose 0.4 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among all rural hospital groups except the smallest hospitals (under 50 beds), which experience a slight decrease of 0.1 percent. The smallest increase among the rural census divisions is 0.6 percent for New England. The largest increase is in rural South Atlantic, with an increase of 3.3 percent.

Among rural hospitals designated as RRCs, 108 hospitals are reclassified for purposes of the wage index only, leading to the 5.6 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 200 or more beds, which has a 4.6 percent increase in payments.

Rural hospitals reclassified for FY 1998 and FY 1999 experience a 6.6 percent increase in payments. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1999 only experience a 4.4 percent increase in payments, while rural hospitals reclassified for FY 1998 only experience a 0.5 percent decrease in payments. Urban hospitals reclassified for FY 1998 but not FY 1999 experience a 0.6 percent decline in payments overall. Urban hospitals reclassified for FY 1999 but not for FY 1998 experience a 3.1 percent increase in payments.

The FY 1999 Reclassification rows of Table I show the changes in payments per case for all FY 1999 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive a 9.2 percent increase in payments. In addition, rural hospitals reclassified just for the wage index receive a 6.1 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.7 percent for FY 1999.

Among the 27 rural hospitals deemed to be urban under section 1886(d)(8)(B) of the Act, payments increase 0.7 percent due to MGCRB reclassification. This is because, although these hospitals are treated as being attached to an urban area in our baseline (their redesignation is ongoing, rather than annual like the MGCRB reclassifications), they are eligible for MGCRB reclassification. For FY 1999, one hospital in this category reclassified to a large urban area.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.4 percent. Rural nonreclassified hospitals decrease slightly more, experiencing a 0.5 percent decrease, and urban nonreclassified hospitals lose 0.6 percent (the amount of the budget neutrality offset).

The number of reclassifications for purposes of the standardized amount, or for both the standardized amount and the wage index, has increased from 149 in FY 1998 to 162 in FY 1999. The number of wage index only reclassifications increased from 284 in FY 1998 to 358 in FY 1999. These increases are mainly attributable to two changes made by the BBA. Section 4202 of the BBA amended section 1886(d)(10)(D) of the Act to allow RRCs to reclassify for wage index purposes based only on comparison of the RRC's average hourly wage to the average hourly wage of the area to which it applies to be reclassified. In addition, section 4203 provides that for FYs 1999–2001, a rural

hospital may be reclassified to an other urban area for the sole purpose of receiving a higher DSH payment.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by February 27 of this year. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

I. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 1999 (including statutory changes), to our estimate of payments per case in FY 1998. It includes the effects of the 0.7 percent update to the standardized amounts and the hospital-specific rates for SCHs, EACHs, and MDHs. It also reflects the 0.3 percentage point difference between the projected outlier payments in FY 1999 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 1998 (5.4 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

Additional changes affecting the difference between FY 1998 and FY 1999 payments are the reductions to the IME and DSH adjustments enacted by the BBA. These changes initially went into effect during FY 1998 and include additional decreases in payment for each of several succeeding years. As noted in the introduction to this impact analysis, for FY 1999, IME is reduced to approximately a 6.5 percent rate of increase, and DSH is reduced by 2 percent from what hospitals otherwise would receive. We estimate the overall effect of these statutory changes to be a 0.4 percent reduction in FY 1999 payments. For hospitals receiving both IME and DSH, the impact is estimated to be a 0.9 percent reduction in payments per case.

We also note that column 8 includes the impacts of FY 1999 MGCRB reclassifications compared to the payment impacts of FY 1998 reclassifications. Therefore, when comparing FY 1999 payments to FY 1998, the percent changes due to FY 1999 reclassifications shown in column 7 need to be offset by the effects of reclassification on hospitals' FY 1998 payments (column 7 of Table 1, August 29, 1997 final rule with comment period; 62 FR 46119). For example, the impact of MGCRB reclassifications on rural hospitals' FY 1998 payments was approximately a 2.2 percent increase, offsetting much of the 2.4 percent increase in column 7 for FY 1999. Therefore, the net change in FY 1999 payments due to reclassification for rural hospitals is actually closer to an increase of 0.2 percent relative to FY 1998. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes in columns 1, 6, and 7, plus the other impacts that we are able to identify.

The overall payment change from FY 1998 to FY 1999 for all hospitals is a 0.7 percent decrease. This reflects the 0.6 percent net change in total payments due to the postacute transfer change for FY 1999 shown in column 1; the 0.7 percent update for FY 1999, the 0.3 percent lower outlier payments in FY 1999 compared to FY 1998 (5.1 percent compared to 5.4 percent); and the 0.4 percent reduction due to lower IME and DSH payments.

Hospitals in urban areas experience a 1.1 percent drop in payments per case compared to FY 1998. Urban hospitals lose 0.9 percent due to the expanded transfer definition and the DRG and wage index changes combined. The 0.4 percent negative impact due to reclassification is offset by an identical negative impact for FY 1998. The impact of reducing IME and DSH is a 0.6 percent reduction in FY 1999 payments per case. Most of this negative impact is incurred by hospitals in large urban areas, where payments are expected to fall 1.4 percent per case compared to 0.5 percent per case for hospitals in other urban areas.

Hospitals in rural areas, meanwhile, experience a 1.5 percent payment increase. As discussed previously, this is primarily due to a smaller negative impact due to the expanded transfer definition (0.4 percent decrease compared to 0.6 percent nationally) and the positive effect due to the wage index and DRG changes (1.3 percent increase).

Among census divisions, urban New England displays the largest negative impact, 3.5 percent. This outcome is primarily related to the 2.4 percent decrease due to the new wage data. Similarly, urban West South Central experiences a 2.0 percent drop in payments per case, due to a 1.1 percent drop due to the new wage data. The urban East North Central and the urban Pacific also experience overall payment declines of more than 1.0 percent, with 1.5 and 1.4 percent decreases, respectively. The West North Central is the only urban census category to experience a rise in payments, stemming primarily from a 0.9 percent increase due to the new wage data. Hospitals in this census division also are less reliant on IME and DSH funding, and are therefore, impacted less by these reductions.

The only rural census division to experience a negative payment impact is New England (0.4 percent fall). This appears to result from a much smaller reclassification effect for rural New England hospitals in FY 1999. For FY 1998, the impact of MGCRB reclassification for these hospitals was a 2.1 percent increase (see 62 FR 46119). For FY 1999, the increase is only 0.6 percent. The largest increases by rural census division are in the South Atlantic and the East South Central, both with 2.0 percent increases in their FY 1999 payments per case. In the South Atlantic, this is primarily due to a larger FY 1999 benefit from MGCRB reclassifications. For the East South Central, it is largely due to a 1.5 percent increase from the FY 1995 wage data.

Among special categories of rural hospitals, RRCs have the largest increase, 2.5 percent. This carries over to other categories as well: rural hospitals with between 150 and 200 beds have a 2.7 percent rise in payments (there are 37 RRCs in this category); and RRCs receiving DSH see a 2.9 percent increase.

The largest negative payment impacts from FY 1998 to FY 1999 are among hospitals that were reclassified for FY 1998 and are not reclassified for FY 1999. Overall, these hospitals lose 3.1 percent. The urban hospitals in this category lose 2.2 percent, while the rural hospitals lose 6.1 percent. On the other hand, hospitals reclassified for FY 1999 that were not reclassified for FY 1998 would experience the greatest payment increases: 4.7 percent overall; 6.1 percent for 153 rural hospitals in this category and 1.9 percent for 25 urban hospitals.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals (1)	Average FY 1998 payment per case (2) [1]	Average FY 1999 payment per case (3) [1]	All changes (4)
(BY GEOGRAPHIC LOCATION):				
ALL HOSPITALS	4,956	6,764	6,715	−0.7
URBAN HOSPITALS	2,792	7,332	7,255	−1.1
LARGE URBAN AREAS	1,588	7,891	7,782	−1.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1998 payment per case (2) [1]	Average FY 1999 payment per case (3) [1]	All changes (4)
OTHER URBAN AREAS	1,204	6,584	6,549	−0.5
RURAL AREAS	2,164	4,461	4,528	1.5
BED SIZE (URBAN):				
0–99 BEDS	690	4,922	4,890	−0.7
100–199 BEDS	936	6,127	6,069	−1.0
200–299 BEDS	566	6,921	6,860	−0.9
300–499 BEDS	448	7,839	7,744	−1.2
500 OR MORE BEDS	152	9,724	9,607	−1.2
BED SIZE (RURAL):				
0–49 BEDS	1,135	3,663	3,712	1.3
50–99 BEDS	635	4,173	4,218	1.1
100–149 BEDS	229	4,609	4,669	1.3
150–199 BEDS	91	4,799	4,927	2.7
200 OR MORE BEDS	74	5,603	5,692	1.6
URBAN BY CENSUS DIV.:				
NEW ENGLAND	152	7,873	7,597	−3.5
MIDDLE ATLANTIC	425	8,168	8,123	−0.5
SOUTH ATLANTIC	413	6,973	6,955	−0.3
EAST NORTH CENTRAL	475	7,016	6,909	−1.5
EAST SOUTH CENTRAL	159	6,558	6,511	−0.7
WEST NORTH CENTRAL	186	7,001	7,011	0.1
WEST SOUTH CENTRAL	350	6,807	6,672	−2.0
MOUNTAIN	126	7,065	7,045	−0.3
PACIFIC	458	8,403	8,289	−1.4
PUERTO RICO	48	3,049	3,057	0.3
RURAL BY CENSUS DIV.:				
NEW ENGLAND	53	5,308	5,285	−0.4
MIDDLE ATLANTIC	80	4,802	4,857	1.1
SOUTH ATLANTIC	286	4,606	4,697	2.0
EAST NORTH CENTRAL	284	4,492	4,559	1.5
EAST SOUTH CENTRAL	269	4,160	4,242	2.0
WEST NORTH CENTRAL	499	4,174	4,250	1.8
WEST SOUTH CENTRAL	341	3,989	4,019	0.7
MOUNTAIN	206	4,815	4,871	1.2
PACIFIC	141	5,603	5,664	1.1
PUERTO RICO	5	2,369	2,389	0.8
(BY PAYMENT CATEGORIES):				
URBAN HOSPITALS	2,877	7,289	7,215	−1.0
LARGE URBAN AREAS	1,681	7,795	7,691	−1.3
OTHER URBAN AREAS	1,196	6,564	6,533	−0.5
RURAL AREAS	2,079	4,440	4,501	1.4
TEACHING STATUS:				
NON-TEACHING	3,875	5,478	5,472	−0.1
FEWER THAN 100 RESIDENTS	841	7,219	7,155	−0.9
100 OR MORE RESIDENTS	240	10,987	10,796	−1.7
DISPROPORTIONATE SHARE HOSPITALS (DSH):				
NON–DSH	3,074	5,830	5,809	−0.4
URBAN DSH:				
100 BEDS OR MORE	1,402	7,941	7,850	−1.1
FEWER THAN 100 BEDS	93	5,024	4,990	−0.7
RURAL DSH:				
SOLE COMMUNITY (SCH)	156	4,255	4,310	1.3
REFERRAL CENTERS (RRC)	47	5,293	5,446	2.9
OTHER RURAL DSH HOSP.:				
100 BEDS OR MORE	64	4,196	4,229	0.8
FEWER THAN 100 BEDS	120	3,572	3,633	1.7
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	700	8,961	8,837	−1.4
TEACHING AND NO DSH	328	7,390	7,318	−1.0
NO TEACHING AND DSH	795	6,342	6,303	−0.6
NO TEACHING AND NO DSH	1,054	5,661	5,626	−0.6
SPECIAL UPDATE HOSPITALS (UNDER SEC. 4401(b) OF PUBLIC LAW 105–33	356	5,322	5,305	−0.3
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS	904	3,948	3,986	1.0

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1998 payment per case (2) [1]	Average FY 1999 payment per case (3) [1]	All changes (4)
RRC	137	5,182	5,309	2.5
SCH/EACH	633	4,490	4,525	0.8
MDH	351	3,701	3,747	1.3
SCH/EACH AND RRC	54	5,363	5,433	1.3
TYPE OF OWNERSHIP:				
VOLUNTARY	2,859	6,949	6,894	−0.8
PROPRIETARY	671	6,148	6,092	−0.9
GOVERNMENT	1,331	6,233	6,215	−0.3
UNKNOWN	95	7,984	7,928	−0.7
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0–25	249	8,884	8,740	−1.6
25–50	1,267	8,243	8,142	−1.2
50–65	1,975	6,168	6,143	−0.4
OVER 65	1,370	5,250	5,247	0.0
UNKNOWN	95	7,984	7,928	−0.7
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:				
RECLASSIFICATION STATUS DURING FY98 AND FY99:				
RECLASSIFIED DURING BOTH FY98 AND FY99	311	5,995	5,989	−0.1
URBAN	70	7,505	7,468	−0.5
RURAL	241	5,250	5,258	0.2
RECLASSIFIED DURING FY99 ONLY	178	5,512	5,773	4.7
URBAN	25	8,442	8,605	1.9
RURAL	153	4,705	4,993	6.1
RECLASSIFIED DURING FY98 ONLY	111	6,192	6,000	−3.1
URBAN	38	7,018	6,865	−2.2
RURAL	73	4,458	4,185	−6.1
FY 99 RECLASSIFICATIONS:				
ALL RECLASSIFIED HOSP.	489	5,815	5,908	1.6
STAND. AMT. ONLY	94	5,938	5,920	−0.3
WAGE INDEX ONLY	281	5,994	5,940	−0.9
BOTH	47	6,390	6,290	−1.6
NONRECLASS.	4,507	6,844	6,795	−0.7
ALL URBAN RECLASS.	95	7,767	7,786	0.2
STAND. AMT. ONLY	25	5,922	5,924	0.0
WAGE INDEX ONLY	45	9,138	9,194	0.6
BOTH	25	6,679	6,647	−0.5
NONRECLASS.	2,670	7,327	7,245	−1.1
ALL RURAL RECLASS.	394	5,026	5,149	2.5
STAND. AMT. ONLY	57	4,516	4,626	2.4
WAGE INDEX ONLY	309	5,086	5,204	2.3
BOTH	28	5,038	5,230	3.8
NONRECLASS.	1,770	4,106	4,137	0.8
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	27	4,725	4,695	−0.6

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 1999 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1999 with the average estimated per case payments for FY 1998, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VIII. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable in previous impact analyses for the capital prospective payment system. Specifically, we have cost report data available for the fourth year of the capital prospective payment system (cost reports beginning in FY 1995) available through the December 1997 update of the Health Care Provider Cost Report Information System (HCRIS). We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.

• Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 1999 capital cost projections. In Appendix B of this proposed rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 1999 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between ''hold-harmless'' hospitals and ''fully prospective'' hospitals in FY 1999. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 1999 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 1999 capital costs for individual hospitals, but with the most recent data hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

B. Projected Impact Based on the Proposed FY 1999 Actuarial Model

1. Assumptions. In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1998 to FY 1999 using a capital cost model. The FY 1999 model, as described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1995 as reported on the December 1997 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 1998 in the provider-specific file. We used these data to determine the proposed FY 1999 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1995, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1995. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1999 actuarial model includes the following assumptions:

• Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

Fiscal Year	Percentage Change
1997	−2.20
1998	−0.44
1999	0.61

We have reduced our estimate of the growth in Medicare costs per discharge from the August 29, 1997 final rule with comment period to this proposed rule based on later cost data. We are now estimating a much smaller increase in costs per discharge.

• The Medicare case-mix index will increase by 1.0 percent in FY 1998 and FY 1999.

• The Federal capital rate and hospital-specific rate were updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 1999 update for inflation is 0.20 percent (see section III of the Addendum).

2. Results. We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1998 to FY 1999. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 1999

Type of hospital	Percent of hospitals	Percent of discharges	Percent of capital costs	Percent of capital payments
Low Cost Hospital	67	62	53	58
High Cost Hospital	33	38	47	42

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in to use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 1998 to FY 1999 using the above described actuarial model. With the proposed Federal rate, we estimate aggregate Medicare capital payments will increase by 2.60 percent in FY 1999.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 1999 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 1998
FY 1998 Payments per Discharge:									
Low Cost Hospitals	3,260	6,746,172	$458.89	72.51	$86.07	$4.04	$8.87	$557.88	.....
Fully Prospective	3,021	6,102,199	440.78	70.00	95.16	.....	8.21	544.15	.....
100% Federal Rate	208	567,402	661.26	100.00	.....	.....	11.10	672.36	.....
Hold Harmless	31	76,570	402.65	59.69	.....	355.79	45.50	803.94	.....
High Cost Hospitals	1,637	4,163,057	636.32	95.82	.....	36.64	16.72	689.68	.....
100% Federal Rate	1,398	3,701,256	667.50	100.00	.....	.....	11.65	679.14	.....
Hold Harmless	239	461,801	386.44	60.70	.....	330.33	57.34	774.12	.....
Total Hospitals	4,897	10,909,229	526.60	81.67	53.23	16.48	11.87	608.18	.....
FY 1999 Payments per Discharge:									
Low Cost Hospitals	3,260	6,596,003	$529.51	81.61	$58.10	$3.38	$9.53	$597.52	7.11
Fully Prospective	3,021	5,966,449	513.52	80.00	64.23	.....	8.47	586.21	7.73
100% Federal Rate	211	561,909	674.19	100.00	.....	.....	10.98	685.17	1.91
Hold Harmless	28	67,646	445.71	64.76	.....	329.56	91.77	867.04	7.85
High Cost Hospitals	1,637	4,068,306	655.17	97.22	.....	25.50	23.85	704.52	2.15
100% Federal Rate	1,417	3,678,286	681.02	100.00	.....	.....	16.94	697.97	2.77
Hold Harmless	220	390,020	411.40	67.81	.....	265.94	88.99	766.33	−1.01
Total Hospitals	4,897	10,664,309	575.59	87.73	35.93	11.82	15.00	638.34	4.96

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 7.73 percent, and high capital cost hospitals will experience an average increase of 2.15 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 70 percent to 80 percent and the hospital-specific rate payment percentage will decrease from 30 to 20 percent in FY 1999. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital will increase from 60.70 percent to 67.81 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 85.6 percent to 86.8 percent. We estimate that high cost hold-harmless hospitals will experience a decrease in payments of 1.01 percent from FY 1998 to FY 1999. The apparent decrease occurs because we estimate that there will be 19 fewer high-cost hold-harmless hospitals in FY 1999. These 19 hospitals may have higher payments than the remaining hospitals, hence the apparent decrease when they are removed from the group. This decrease is partially offset by an increase in the Federal portion of the hospital's payments and a projected increase in exceptions payments.

We expect that the average hospital-specific rate payment per discharge will decrease from $95.16 in FY 1998 to $64.23 in FY 1999. This is partly due to the decrease in the hospital-specific rate payment percentage from 30 percent in FY 1998 to 20 percent in FY 1999.

We are proposing no changes in our exceptions policies for FY 1999. As a result, the minimum payment levels would be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 1.95 percent of total capital payments in FY 1998 to 2.35 percent of payments in FY 1999. Since the August 29, 1997 final rule with comment period, we have reduced our estimates of capital cost per case based on more recent data. Although we still estimate that more hospitals will receive exceptions payment in FY 1999 than in FY 1998 fewer hospitals will have costs over the exceptions threshold then we previously estimated. The projected distribution of the exception payments is shown in the table below:

Estimated FY 1999 Exceptions Payments

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	178	39
High Capital Cost	200	61
Total	378	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	4,897	5.1	33.2	61.7
Large urban areas (populations over 1 million)	1,558	5.7	40.7	53.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Other urban areas (populations of 1 million or fewer)	1,188	6.2	40.8	52.9
Rural areas	2,151	4.0	23.7	72.4
Urban hospitals	2,746	5.9	40.8	53.3
0–99 beds	653	5.8	33.8	60.3
100–199 beds	928	8.5	45.9	45.6
200–299 beds	565	5.8	40.9	53.3
300–499 beds	448	2.2	40.8	56.9
500 or more beds	152	2.0	38.2	59.9
Rural hospitals	2,151	4.0	23.7	72.4
0–49 beds	1,124	3.5	16.1	80.4
50–99 beds	633	4.3	28.8	67.0
100–149 beds	229	4.8	38.0	57.2
150–199 beds	91	7.7	25.3	67.0
200 or more beds	74	1.4	48.6	50.0
By Region				
Urban by Region	2,746	5.9	40.8	53.3
New England	151	0.0	27.8	72.2
Middle Atlantic	421	4.5	34.0	61.5
South Atlantic	409	5.4	53.5	41.1
East North Central	472	5.5	30.5	64.0
East South Central	157	10.8	48.4	40.8
West North Central	183	6.0	36.6	57.4
West South Central	332	13.3	55.7	31.0
Mountain	122	4.9	50.8	44.3
Pacific	451	3.3	37.7	59.0
Puerto Rico	48	6.3	22.9	70.8
Rural by Region	2,151	4.0	23.7	72.4
New England	53	0.0	22.6	77.4
Middle Atlantic	79	5.1	25.3	69.6
South Atlantic	282	2.5	33.0	64.5
East North Central	283	3.2	19.1	77.7
East South Central	267	1.9	34.1	64.0
West North Central	498	3.6	16.1	80.3
West South Central	339	3.8	27.4	68.7
Mountain	205	10.7	15.6	73.7
Pacific	140	5.0	23.6	71.4
Large urban areas (populations over 1 million)	1,651	5.9	40.5	53.7
Other urban areas (populations of 1 million or fewer)	1,180	5.8	41.1	53.1
Rural areas	2,066	4.0	23.0	73.0
Teaching Status:				
Non-teaching	3,818	5.1	32.8	62.0
Fewer than 100 Residents	840	5.7	35.1	59.2
100 or more Residents	239	1.7	33.5	64.9
Disproportionate share hospitals (DSH):				
Non-DSH	3,029	5.3	28.9	65.8
Urban DSH:				
100 or more beds	1,397	5.2	43.7	51.0
Less than 100 beds	87	1.1	29.9	69.0
Rural DSH:				
Sole Community (SCH/EACH)	156	5.1	22.4	72.4
Referral Center (RRC/EACH)	47	2.1	53.2	44.7
Other Rural:				
100 or more beds	64	4.7	37.5	57.8
Less than 100 beds	117	0.9	28.2	70.9
Urban teaching and DSH:				
Both teaching and DSH	699	4.0	36.6	59.4
Teaching and no DSH	327	6.7	31.5	61.8
No teaching and DSH	785	5.9	48.5	45.6
No teaching and no DSH	1,020	6.8	40.5	52.7
Rural Hospital Types:				
Non special status hospitals	894	2.0	24.0	73.9
RRC/EACH	137	2.2	40.1	57.7
SCH/EACH	632	8.2	19.9	71.8
Medicare-dependent hospitals (MDH)	349	1.1	17.5	81.4
SCH, RRC and EACH	54	11.1	33.3	55.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Type of Ownership:				
Voluntary	2,847	4.9	33.0	62.1
Proprietary	656	10.1	58.2	31.7
Government	1,329	3.2	21.1	75.7
Medicare Utilization as a Percent of Inpatient Days:				
0–25	238	4.2	30.7	65.1
25–50	1,260	5.9	41.0	53.2
50–65	1,970	5.6	33.0	61.4
Over 65	1,364	3.8	26.6	69.6

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 59 of the 4,956 hospitals in our database. Consequently, the payment methodology distribution is based on 4,897 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) Geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and the hold-harmless payment methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 33.2 percent in FY 1999. We note that the number of hospitals paid fully Federal as hold-harmless hospitals has not increased as quickly as we predicted in the August 29, 1997 final rule with comment period because of revised estimates.

Table IV indicates that 61.7 percent of hospitals will be paid under the fully prospective payment methodology. (This figure, unlike the figure of 67 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (73.0 percent and 75.7 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 31.7 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1999 actuarial model to estimate the potential impact of our proposed changes for FY 1999 on total capital payments per case, using a universe of 4,897 hospitals. The individual hospital payment parameters are taken from the best available data, including: The January 1, 1998 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the FY 1999 payment policies. Columns 3 and 4 show estimates of payments per case under our model for FY 1998 and FY 1999. Column 5 shows the total percentage change in payments from FY 1998 to FY 1999. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 1.5 percent increase in the Federal rate, a 1.0 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects of all other changes, including: the change from 70 percent to 80 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) Geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 5.0 percent in FY 1999. The results show that the effect of the Federal rate changes alone is to increase payments by 1.5 percent. In addition to the increase attributable to the Federal rate changes, a 3.5 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (4.8 percent and 6.3 percent, respectively). This difference is due to the lower rate of increase for urban hospitals relative to rural hospitals (1.3 percent and 3.2 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain approximately the same as rural hospitals (3.5 percent versus 3.1 percent) from the effects of all other changes.

All regions are estimated to receive increases in total capital payments per case, partly due to the increased share of payments that are based on the Federal rate (from 70 to 80 percent). Changes by region vary from a low of 3.6 percent increase (West South Central urban region) to a high of 7.8 percent increase (Pacific rural region).

By type of ownership, government hospitals are projected to have the largest rate of increase (6.2 percent, 1.9 percent due to Federal rate changes and 4.3 percent from the effects of all other changes). Payments to voluntary hospitals will increase 5.1 percent (a 1.5 percent increase due to Federal rate changes and a 3.6 percent increase from the effects of all other changes) and payments to proprietary hospitals will increase 2.8 percent (a 1.1 percent increase due to Federal rate changes and a 1.7 percent increase from the effects of all other changes).

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both and for purposes of DSH, for FY 1999–2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1999 compared to the effects of reclassification for FY 1998, we show the average payment percentage increase for hospitals reclassified in each

fiscal year and in total. For FY 1999 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 1999 as a whole are projected to experience a 6.8 percent increase in payments (a 3.5 percent increase attributable to Federal rate changes and a 3.3 percent increase attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (5.1 percent) than reclassified hospitals (6.8 percent) overall. Payments to nonreclassified hospitals will increase less than reclassified hospitals from the Federal rate changes (1.5 percent compared to 3.5 percent), but they will gain about the same from the effects of all other changes (3.6 percent compared to 3.3 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1998 COMPARED TO FY 1999)

	Number of hospitals	Average FY 1998 payments/case	Average FY 1999 payments/case	All changes	Portion attributable to federal rate change
By Geographic Location:					
All hospitals	4,897	608	638	5.0	1.5
Large urban areas (populations over 1 million)	1,558	700	732	4.5	1.1
Other urban areas (populations of 1 million of fewer)	1,188	601	633	5.2	1.5
Rural areas	2,151	405	431	6.3	3.2
Urban hospitals	2,746	658	689	4.8	1.3
0–99 beds	653	482	502	4.1	1.2
100–199 beds	928	584	605	3.6	1.1
200–299 beds	565	628	661	5.4	1.3
300–499 beds	448	686	720	4.9	1.2
500 or more beds	152	824	866	5.1	1.4
Rural hospitals	2,151	405	431	6.3	3.2
0–49 beds	1,124	325	348	6.9	2.9
50–99 beds	633	382	407	6.6	2.8
100–149 beds	229	421	446	5.9	3.0
150–199 beds	91	442	469	6.0	3.8
200 or more beds	74	500	531	6.2	3.7
By Region:					
Urban by Region	2,746	658	689	4.8	1.3
New England	151	659	685	4.0	−0.4
Middle Atlantic	421	708	743	5.0	1.8
South Atlantic	409	649	678	4.4	1.8
East North Central	472	616	650	5.5	1.0
East South Central	157	611	633	3.6	0.8
West North Central	183	638	673	5.6	2.3
West South Central	332	664	688	3.6	0.5
Mountain	122	691	728	5.4	1.6
Pacific	451	719	755	5.1	1.0
Puerto Rico	48	277	288	4.1	1.9
Rural by Region	2,151	405	431	6.3	3.2
New England	53	475	497	4.5	1.9
Middle Atlantic	79	413	443	7.4	3.4
South Atlantic	282	430	455	5.9	3.5
East North Central	283	401	431	7.4	3.4
East South Central	267	376	400	6.6	3.4
West North Central	498	390	411	5.6	3.4
West South Central	339	370	390	5.5	2.5
Mountain	205	434	461	6.4	2.4
Pacific	140	478	515	7.8	2.8
By Payment Classification:					
All hospitals	4,897	608	638	5.0	1.5
Large urban areas (populations over 1 million)	1,651	692	724	4.5	1.1
Other urban areas (populations of 1 million of fewer)	1,180	599	631	5.2	1.5
Rural areas	2,066	402	427	6.2	3.0
Teaching Status:					
Non-teaching	3,818	517	540	4.5	1.7
Fewer than 100 Residents	840	647	682	5.4	1.3
100 or more Residents	239	889	936	5.3	1.3
Urban DSH:					
100 or more beds	1,397	693	727	4.9	1.3
Less than 100 beds	87	444	467	5.1	1.1
Rural DSH:					
Sole Community (SCH/EACH)	156	364	383	5.2	2.5
Referral Center (RRC/EACH)	47	462	494	7.0	4.5
Other Rural:					
100 or more beds	64	384	400	4.3	2.8
Less than 100 beds	117	320	340	6.3	3.3
Urban teaching and DSH:					
Both teaching and DSH	699	761	801	5.3	1.2
Teaching and no DSH	327	659	696	5.5	1.3

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1998 COMPARED TO FY 1999)—Continued

	Number of hospitals	Average FY 1998 payments/case	Average FY 1999 payments/case	All changes	Portion attributable to federal rate change
No teaching and DSH	785	585	610	4.3	1.3
No teaching and no DSH	1,020	558	579	3.7	1.3
Rural Hospital Types:					
Non special status hospitals	894	367	389	6.0	2.6
RRC/EACH	137	475	506	6.5	3.9
SCH/EACH	632	391	416	6.2	2.4
Medicare-dependent hospitals (MDH)	349	324	355	9.5	3.6
SCH, RRC and EACH	54	483	500	3.5	3.1
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY98 and FY99:					
Reclassified During Both FY98 and FY99	311	540	566	4.8	1.7
Reclassified During FY99 Only	178	487	537	10.4	6.8
Reclassified During FY98 Only	110	580	587	1.2	−1.4
FY99 Reclassifications:					
All Reclassified Hospitals	489	520	555	6.8	3.5
All Nonreclassified Hospitals	4,449	614	646	5.1	1.5
All Urban Reclassified Hospitals	95	663	708	6.8	2.3
Urban Nonreclassified Hospitals	2,624	659	689	4.7	1.2
All Reclassified Rural Hospitals	394	462	494	6.8	4.2
Rural Nonreclassified Hospitals	1,757	369	391	6.0	2.4
Other Reclassified Hospitals (Section 1886 (D)(8)(B))	27	461	476	3.3	1.1
Type of Ownership:					
Voluntary	2,847	622	653	5.1	1.5
Proprietary	656	617	634	2.8	1.1
Government	1,329	530	563	6.2	1.9
Medicare Utilization as a Percent of Inpatient Days:					
0–25	238	685	725	5.8	1.1
25–50	1,260	724	759	4.7	1.3
50–65	1,970	565	594	5.2	1.6

Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. To determine these factors, we must continue to project capital costs and payments.

We have used the capital acquisition model since the start of prospective payments for capital costs. We now have 4 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this proposed rule: The December 31, 1997 update of the cost reports for PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993), PPS–XI (cost reporting periods beginning in FY 1994), and PPS–XII (cost reporting periods beginning in FY 1995). In addition, to model payments, we use the January 1, 1998 update of the provider-specific file, and the March 1994 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 1998 hospital-specific rates using the provider-specific file and the intermediary audit file. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
Provider-Specific File Only	99
Provider-Specific and Audit File	4857
Total	4956

Eighty-six of the 4,956 hospitals had unusable or missing data or had no cost reports available. We determined from the cost reports that 27 of the 86 hospitals were paid under the hold-harmless methodology. Since the hospital-specific amount is not used to determine payments for these hospitals, we were able to include these 27 hospitals in the analysis. We used the cost report data of 4,897 hospitals for the analysis. Fifty-nine hospitals could not be used in the analysis because of insufficient information. These hospitals account for approximately 0.3 percent of admissions, therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ±20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat ''obligated'' capital put into service as

old capital has expired. Old capital costs should, therefore, decrease as assets become fully depreciated, and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no-change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed-size for large hospitals. We found the probability somewhat dependent on the prior year change in bed-size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed-size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed-size for large hospitals, we first projected changes in bed-size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1997 (the MedPAR data year) and later, we use the number of discharges from the MEDPAR data. Some hospitals have considerably more discharges in FY 1997 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 1997 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of ''existing'' assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1997 MedPAR file using the FY 1998 DRG relative weights published in section V. of the Addendum to this proposed rule. The case-mix index is increased each year after FY 1997 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 1.0 percent in FY 1998 and 1.0 percent in FY 1999. (Since we are using FY 1997 cases for our analysis, the FY 1997 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1998, the budget neutrality adjustment factor was 1.00015.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we propose to apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We propose to apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 since the geographic adjustment factor for Puerto Rico was implemented in 1998.

To determine the factors for FY 1999, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 1999 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 1998 DRG relative weights and the FY 1998 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1998 relative weights and the FY 1999 geographic adjustment factor. In making the comparison, we held the FY 1999 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that, to achieve budget neutrality for the changes in the national geographic adjustment factor, an incremental budget neutrality adjustment of 0.99995 for FY 1999 should be applied to the previous cumulative FY 1998 adjustment of 1.00015, yielding a cumulative adjustment of 1.00010 through FY 1999. Since this is the first adjustment for Puerto Rico, the incremental and cumulative adjustment for Puerto Rico would be 0.99887 through 1999. We apply these new adjustments then compare estimated aggregate Federal rate payments based on the FY 1998 DRG relative weights and the FY 1999 geographic adjustment factors to estimated aggregate

Federal rate payments based on the FY 1999 DRG relative weights and the FY 1999 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative weights would be 1.00328 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through 1999 would be 1.00338 nationally, and 1.00215 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental Adjustment			Cumulative	Incremental Adjustment			Cumulative
	Geographic Adjustment Factor	DRG Reclassifications and Recalibration	Combined		Geographic Adjustment Factor	DRG Reclassifications and Recalibration	Combined	
1992	.....	.....	.....	1,000.00	.....	.....	.....	.....
1993	.....	.....	0.998.00	0.998.00	.....	.....	.....	.....
1994	.....	.....	1.00531	1.00330	.....	.....	.....	.....
1995	.....	.....	0.99980	1.00310	.....	.....	.....	.....
1996	.....	.....	0.99940	1.00250	.....	.....	.....	.....
1997	.....	.....	0.99873	1.00123	.....	.....	.....	.....
1998	.....	.....	0.99892	1.00015	.....	.....	.....	1.00000
1999	0.99995	1.00328	1.00323	1.00338	0.99887	1.00328	1.00215	1.00215

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban add-on payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for fiscal years 1992 through 1998, the proposed factors for fiscal year 1999, and the estimated factors that would be applicable through FY 2003. We caution that these are estimates for fiscal years 2000 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy changes. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 1.00338 (1.00215 for Puerto Rico) for FY 1999 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1999.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor [1]	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier reduction)
1992	N/A	0.9813	0.9602	.....	.9497	.....	415.59
1993	6.07	.9756	.9162	.9980	.9496	.....	417.29
1994	3.04	.9485	.8947	1.0053	.9454	[2].9260	378.34
1995	3.44	.9734	.8432	.9998	.9414	.....	376.83
1996	1.20	.9849	N/A	.9994	.9536	[3].9972	461.96
1997	0.70	.9358	N/A	.9987	.9481	.....	438.92
1998	0.90	.9659	N/A	.9989	.9382	[4].8222	371.51
1999	0.20	.9761	N/A	1.0032	.9378	.....	377.25
2000	0.80	.9749	N/A	[5] 1.0000	[5].9378	.....	379.80
2001	0.80	.9720	N/A	1.0000	.9378	.....	381.70
2002	0.90	[6] 1.0000	N/A	1.0000	.9378	.....	396.23
2003	0.90	[6] 1.0000	N/A	1.0000	.9378	[4] 1.0255	410.01

[1] Note: The incremental change over the previous year.
[2] Note: OBRA 1993 adjustment.
[3] Note: Adjustment for change in the transfer policy.
[4] Note: Balanced Budget Act of 1997 adjustment.
[5] Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.
[6] Note: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

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Appendix C: Report to Congress

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY 4 1998

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 1999 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 1999 budget includes, an update for PPS hospitals equal to the market basket rate of increase minus 1.9 percentage points, or, for certain hospitals under the temporary relief provision of section 4401(b) of the Balanced Budget Act of 1997, the market basket rate of increase minus 1.6 percentage points. The President's FY 1999 budget estimated the PPS market basket rate of increase for FY 1999 to be 2.7 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 0.8 percent, and an update for temporary relief hospitals of 1.1 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection to maintain access to services for beneficiaries. MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. Current law mandates that the FY 1999 update to hospital-specific rates for SCHs and MDHs equal the market basket rate of increase minus 1.9 percentage points. Consistent with the President's FY 1999 budget, we recommend an update to hospital-specific rates equal to our recommended increase for PPS hospitals, that is, the market basket rate of increase of 2.7 percent minus 1.9 percentage points, or 0.8 percent.

Page 2 - The Honorable Albert Gore, Jr.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Current law mandates that the update for all hospitals and distinct part units excluded from PPS equal the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. The President's FY 1999 budget incorporates a rate of increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (2.7 percent) minus a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. Therefore, we recommend an increase in the TEFRA limit of between 0.2 and 2.7 percent.

My recommendation for the updates is based on cost projections used in the President's FY 1999 budget. A final recommendation on the appropriate percentage increases for FY 1999 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC). We currently expect that the final estimate of the market basket rate of increase will be lower than the estimate used in the President's FY 1999 budget.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1999.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY 4 1998

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 1999 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 1999 budget includes, an update for PPS hospitals equal to the market basket minus 1.9 percentage points, or, for certain hospitals under the temporary relief provision of section 4401(b) of the Balanced Budget Act of 1997, the market basket rate of increase minus 1.6 percentage points. The President's FY 1999 budget estimated the PPS market basket rate of increase for FY 1999 to be 2.7 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 0.8 percent, and an update for temporary relief hospitals of 1.1 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection to maintain access to services for beneficiaries. MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. Current law mandates that the FY 1999 update to hospital-specific rates for SCHs and MDHs equal the market basket rate of increase minus 1.9 percentage points. Consistent with the President's FY 1999 budget, we recommend an update to hospital-specific rates equal to our recommended increase for PPS hospitals, that is, the market basket rate of increase of 2.7 percent minus 1.9 percentage points, or 0.8 percent.

Page 2 - The Honorable Newt Gingrich

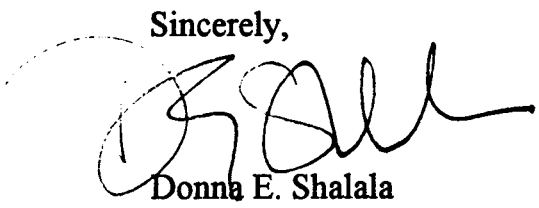
Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Current law mandates that the update for all hospitals and distinct part units excluded from PPS equal the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. The President's FY 1999 budget incorporates a rate of increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (2.7 percent) minus a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. Therefore, we recommend an increase in the TEFRA limit of between 0.2 and 2.7 percent.

My recommendation for the updates is based on cost projections used in the President's FY 1999 budget. A final recommendation on the appropriate percentage increases for FY 1999 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC). We currently expect that the final estimate of the market basket rate of increase will be lower than the estimate used in the President's FY 1999 budget.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1999.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,



Donna E. Shalala

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Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 1999 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XIV) of the Act sets the FY 1999 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 1.9 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1999 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 1.9 percentage points. (We note that, as provided in section 4401(b) of the Balanced Budget Act of 1997, certain hospitals that do not receive indirect medical education or disproportionate share payments and are not designated as Medicare-dependent, small rural hospitals will receive an update that is 0.3 percent higher than the update for other prospective payment hospitals. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1999 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus a percentage between 0 and 2.5 percent percentage points, depending on the hospital's costs in relation to its limit.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the fourth quarter 1997 forecast of the FY 1999 market basket increase of 2.6 percent for hospitals subject to the prospective payment system, the proposed updates to the standardized amounts are 0.7 percent (that is, the market basket rate of increase minus 1.9 percent) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to sole community and Medicare-dependent, small rural hospitals is also 0.7 percent. The proposed update for hospitals excluded from the prospective payment system is the percentage increase in the excluded hospital market basket (currently estimated at 2.5 percent) less a percentage between 0 and 2.5 percentage points, or an update equal to between 0 and 2.5 percent.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this appendix provides the recommendations of appropriate update factors, the analysis underlying our recommendations, and our responses to the MedPAC recommendations concerning the update factors.

In its March 1, 1998 report, MedPAC stated that the legislated update of market basket increase minus 1.9 percentage points will provide a reasonable level of payment to hospitals. Although MedPAC suggests that a somewhat lower update could be justified in light of changes in the utilization and provision of hospital inpatient care, the Commission does not believe it is necessary to recommend a lower update for FY 1999. MedPAC did not make a separate recommendation for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals. We discuss MedPAC's recommendations concerning the update factors and our responses to these recommendations below.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is 0.7 percent for hospitals located in large urban and other areas. We are also recommending an update of 0.7 percent to the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals. These figures are consistent with the President's FY 1999 budget recommendations, which reflect the update provided by section 4401(a) of the Balanced Budget Act of 1997. We believe these recommended update factors would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund. When the President's budget was submitted, the market basket rate of increase was projected at 2.7 percent. As noted above, this proposed recommendation is based on the most recent forecast of the market basket, 2.6 percent.

We recommend that hospitals excluded from the prospective payment system receive an update of between 0 and 2.5 percent. The update for excluded hospitals and units is equal to the increase in the excluded hospital operating market basket, less a percentage between 0 and 2.5 percentage points depending on the hospital's or unit's costs in relation to its rate-of-increase limit. The market basket rate of increase is currently forecast at 2.5 percentage points. This recommendation is consistent with the President's FY 1999 budget, although we note that the market basket rate of increase was forecast at 2.7 percent when the budget was submitted.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of MedPAC in setting these recommended update factors. Our responses to the MedPAC recommendations concerning the update factors are discussed below.

III. MedPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1999, MedPAC's update framework would support an update of the increase in the hospital market basket minus a figure between 4.4 percentage points and 1.1 percentage points. MedPAC notes that costs per case have grown more slowly than payments per case since 1992 and, as a result, overall Medicare operating margins for hospitals have been rising. MedPAC predicts that Medicare operating margins will continue to be quite favorable even with the payment reductions enacted by the Balanced Budget Act of 1997. MedPAC further notes that Medicare payments are just one of many factors that affect hospital margins. Thus, while MedPAC agrees with the proposed update of market basket increase minus 1.9 percentage points for 1999, that update is closer to the higher end than the lower end of MedPAC's update framework. The Commission emphasizes that, because of uncertainty about the future and the extent of changes in productivity and service delivery, its recommendation applies for only one year. MedPAC's estimate of the market basket increase is 2.5 percent, which is 0.1 percentage points below HCFA's current estimate. MedPAC's market basket estimate focuses on employee compensation changes in the hospital industry and the economy in general, while HCFA's market basket forecast gives less weight to the projected changes in the hospital industry's wages. Thus, MedPAC's update framework reflects a 0.1 percent adjustment for this difference.

Response: We agree with MedPAC's recommendation of an update for FY 1999 for prospective payment system hospitals of market basket minus 1.9 percentage points. Our recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

a. Productivity

Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure since this update framework applies to operating payment. To recognize that we are apportioning the short run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure for operating costs by the share of direct labor services in the market basket rate of increase to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985–1989, or 1.2 percent annually. At the same time, MedPAC estimated total output growth at 3.4 percent

annually, implying a ratio of service productivity growth to output growth of 0.35.

Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket rate of increase. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, and expected quality enhancing intensity growth, net of expected decline in intensity due to reduction of cost ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (−2.0 percent for FY 1999), and projected real case-mix growth (0.8 percent), or −1.2 percent. The share of direct labor services in the market basket rate of increase (consisting of wages, salaries, and employee benefits) is 61.4 percent.

Multiplying the expected change in total hospital service output (−1.2 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.4, provides our productivity standard of −0.2 to −0.3 percent.

MedPAC believes that the update should also take into account the effects of product change. MedPAC analysis indicates that between 1992 and 1996, the decline in length of stay and corresponding increase in the intensity of services per day resulted in a net reduction of about 11 percent for services provided per hospital admission. In the past, ProPAC expected hospitals to achieve productivity gains ranging from 0.5 percent to 2.0 percent per year. This year, recognizing changes in lengths of stay and sites of service, MedPAC believes a product adjustment in the range of −3.0 to −1.0 percentage points is appropriate. In addition, MedPAC's update framework contains a productivity adjustment of between −0.7 to −0.3 percent, which is slightly more optimistic than our estimate.

b. Intensity

We base our intensity standard on the combined effect of three separate factors: Changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 1999, we recommend an adjustment of 0.0 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. A study published in the Winter 1992 issue of the Health Care Financing Review, ''Contributions of case mix and intensity change to hospital cost increases'' (p. 151–163), suggests that one-third of the intensity change is attributable to high-cost technology. The balance was unexplained but the authors speculated that it is attributable to fixed costs in service delivery.

Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost increasing effects for individual technologies and new technologies.

All things being equal, per-discharge fixed costs tend to fluctuate in inverse proportion to changes in volume. Fixed costs exist whether patients are treated or not. If volume is declining, per-discharge fixed costs will rise, but the reverse is true if volume is increasing.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FY 1993–FY 1997 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Medical CPI hospital component and changes in real case mix. Thus, in order to measure changes in intensity, one must measure changes in real case mix.

For FY 1993–FY 1997, observed case mix index change ranged from a low of 0.8 percent to a high of 1.7 percent, with a 5-year average change of 1.3 percent. Based on evidence from past studies of case-mix change, we estimate that real case mix change fluctuates between 1.0 and 1.4 percent and the observed values generally fall in this range. The average percentage change in charge per discharge was 3.4 percent and the average annual change in the medical CPI was 5.7 percent. Dividing the change in charge per discharge by the quantity of the real case-mix index change and the medical CPI, yields an average annual change in intensity of −3.4 percent. Assuming the technology/fixed cost ratio still holds, technology would account for a −1.1 percent annual decline while fixed costs would account for a −2.3 percent annual decline. The decline in fixed costs per discharge makes intuitive sense as volume, measured by total discharges, as increased during the period. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1999.

c. Quality Enhancing New Science and Technology

For FY 1999, MedPAC has computed the adjustment for scientific and technological advances to be a future-oriented policy target intended to provide additional funds for hospitals to adopt quality-enhancing, cost increasing health care innovations. As in past recommendations, MedPAC has included an adjustment ranging from 0.3 to 1.0 percentage points. MedPAC believes that the cost-competitive environment now faced by hospitals may dampen the adoption of new technologies as they closely evaluate their relative costs and benefits. Therefore, MedPAC recommends an adjustment of 0.5 percentage points for the increase in operating costs due to scientific and technological advances.

d. Change in Case Mix

Our analysis takes into account projected changes in case mix, adjusted for changes attributable to improved coding practices. For our FY 1999 update recommendation, we are projecting a 1.0 percent increase in the case-mix index. We define real case-mix increase as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs, but do not reflect greater resource requirements. For FY 1999, we believe that real case-mix increase is equal to our projected change in case mix less 0.2 percent. We estimate that changes in coding behavior account for an increase of 0.2 percentage points in our projected case-mix change. Thus, we are projecting an increase of 0.8 percentage points for the real case-mix index.

Unlike ProPAC's case-mix recommendation in previous years, MedPAC did not make a specific percentage change recommendation but rather estimated a range from −0.2 to 0.2 percentage point change based on changes in the 1998 case mix index.

e. Effect of FY 1997 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 1997 resulted in a 0.0 percent increase in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. MedPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation.

f. Correction for Market Basket Forecast Error

The estimated market basket percentage increase used to update the FY 1997 payment

rates was 2.5 percent. Our most recent data indicate the actual FY 1997 increase was 2.1 percent. The resulting forecast error in the FY 1997 market basket rate of increase is 0.4 percentage points. Under our update framework, we make a forecast error correction if our estimate is off by 0.25 percentage points or more. Therefore, we are recommending an adjustment of −0.4 percentage points to reflect this overestimation of the FY 1997 market basket rate of increase. The following is a summary of the update ranges supported by our analyses compared to MedPAC's framework.

TABLE 1.—COMPARISON OF FY 1999 UPDATE RECOMMENDATIONS

	HHS	MedPAC
Market Basket	MB	MB
Difference between HCFA & MedPAC Market Baskets		−0.1
Subtotal	MB	MB
Policy Adjustments Factors:		
Productivity	−0.3 to −0.2	−0.7 to −0.3
Product	(3)	−3.0 to −1.0
Intensity	0.0.	
Science & Technology		0.0 to 0.5
Practice Patterns		(1)
Real Within DRG Change		(2)
Subtotal	−0.3 to −0.2	−3.7 to −0.8
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	−1.0	
Real Across DRG Change	0.8	−0.2 to 0.0
Real Within DRG Change	(3)	0.0 to 0.2
Subtotal	−0.2	−0.2 to 0.2
Effect of 1996 Reclassification & Recalibration	0.0	
Forecast Error Correction	−0.4	−0.4
Total Recommended Update	MB −0.9 to MB −0.8	MB −4.4 to MB −1.1

[1] Included in MedPAC's Productivity Measure.
[2] Included in MedPAC's Case-Mix Adjustment.
[3] Included in HHS' Intensity Factor.

Because we are not recommending a negative adjustment for intensity (as our methodology would suggest is appropriate), the update suggested by our framework appears to be more generous than the recommendation of MedPAC. While the above framework would support an update of the market basket increase minus 0.9 percentage points, we are recommending an update of the market basket increase minus 1.9 percentage points (0.7 percent). We believe that this update factor appropriately adjusts for changes occurring in health care delivery including the relative decrease in use of hospital inpatient services and the corresponding increase in use of hospital outpatient and postacute care services. We agree with MedPAC that a 0.7 percent update for FY 1999 would not disadvantage the hospital industry nor harm Medicare beneficiaries. We also recommend that the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals be increased by the same update, 0.7 percentage points.

IV. MedPAC Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

MedPAC recommends an update factor equal to a 2.1 percent average increase for TEFRA target amounts for excluded hospitals and units. The update formula enacted by section 4411(a) of the Balanced Budget Act is equal to the increase in the excluded hospital market basket less a percentage point between 0 and 2.5 percent, depending on the hospital's or unit's costs in relation to the target amount. MedPAC's recommendation reflects a reduction of 0.4 percentage points from HCFA's market basket increase forecast of 2.5 percent. The reduction consists of an adjustment of -0.4 percentage points to account for the forecast error in the FY 1997 market basket rate of increase, and no allowance for new technology.

Response: We recommend that hospitals excluded from the prospective payment system also receive a 2.5 percent increase in the market basket used in the update formula for TEFRA target amount updates provided to the prospective payment hospitals. We believe this update would ensure that Medicare acts as a prudent purchaser and would provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

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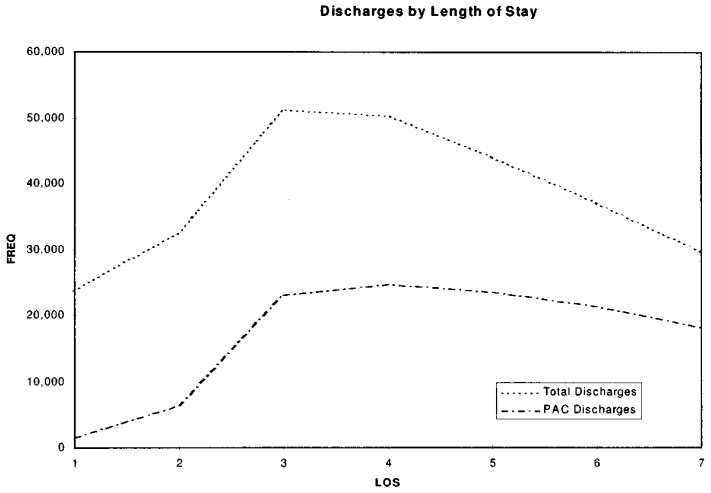
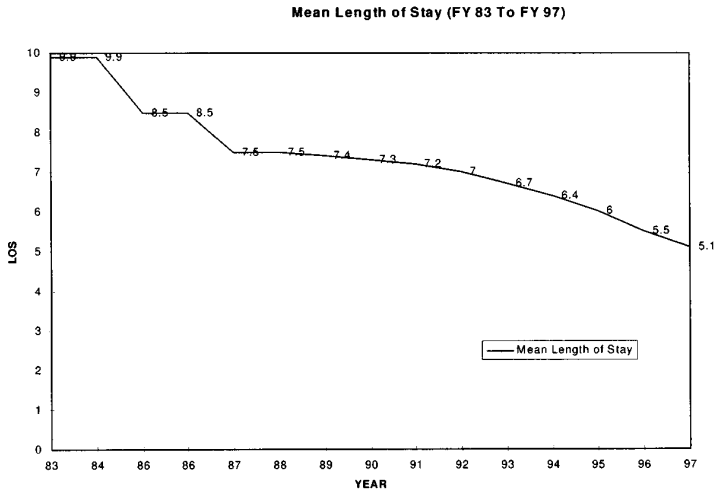
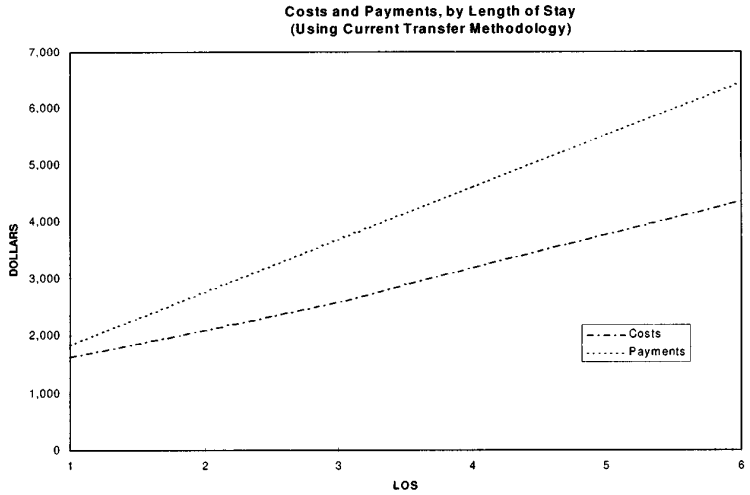
APPENDIX E: DRG Charts

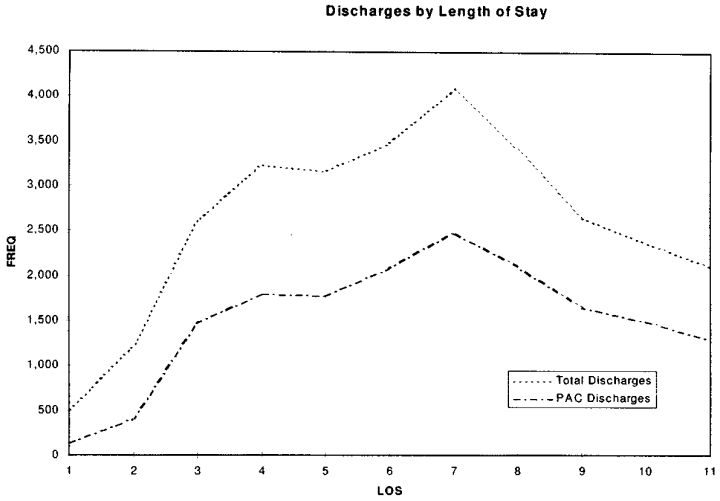
DRG 14
SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA (MEDICAL)

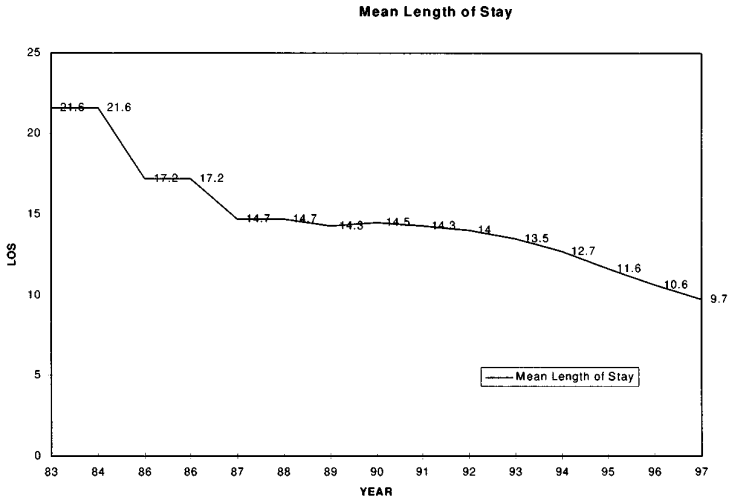


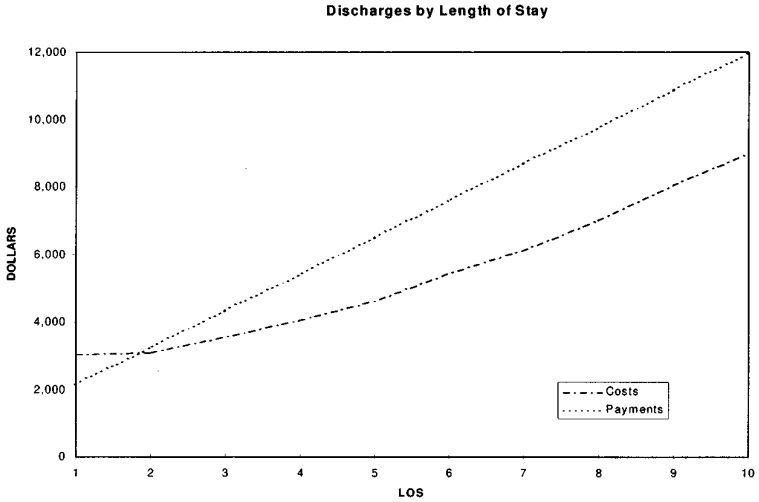




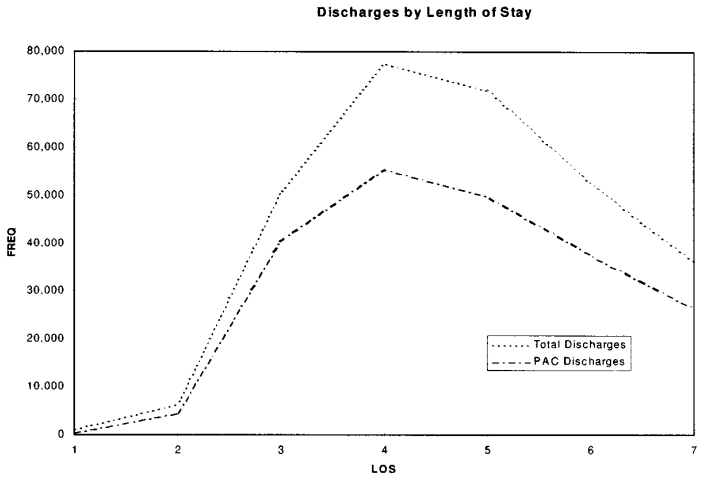
DRG 113
AMPUTATION FOR CIRCULATORY SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE (SURGICAL)

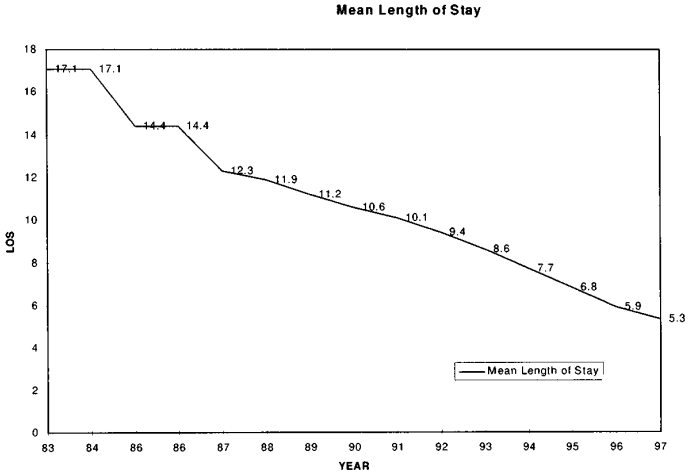


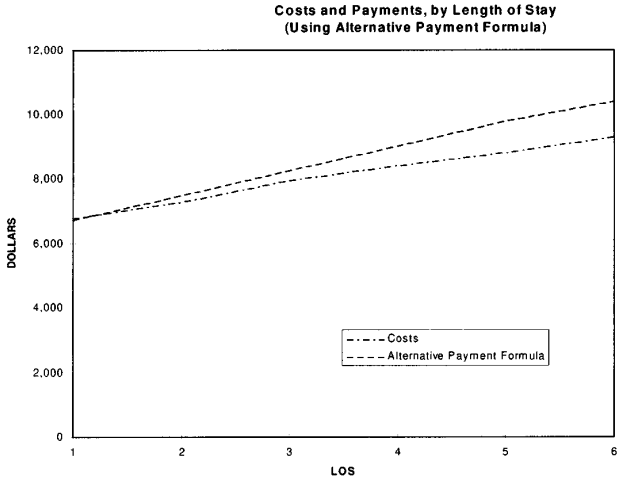




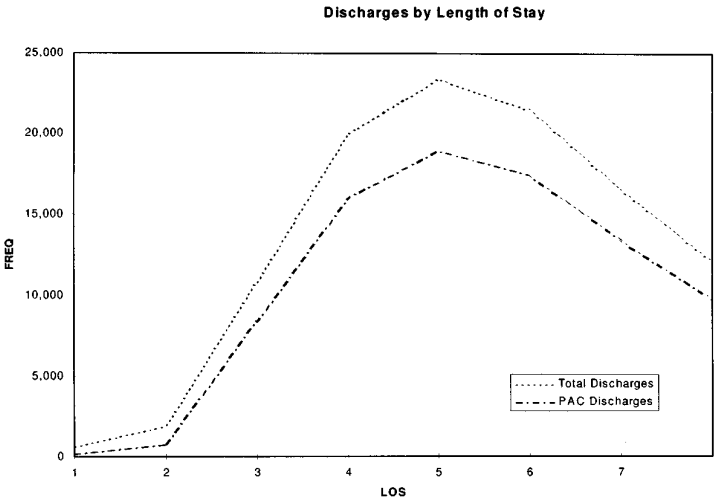
DRG 209
MAJOR JOINT LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY (SURGICAL)

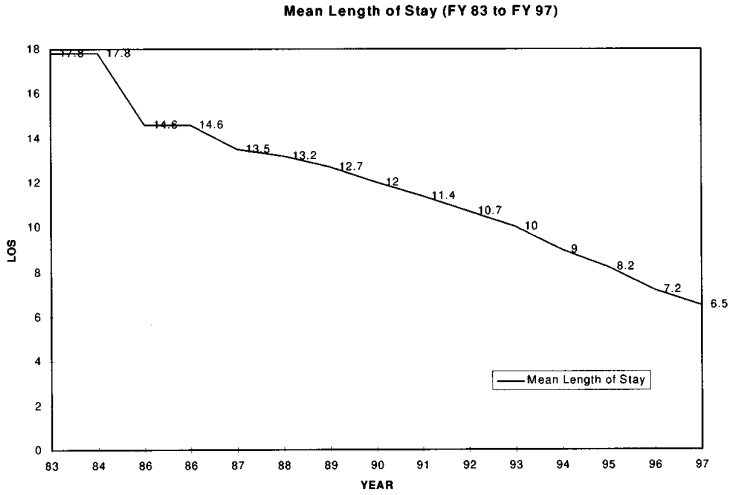


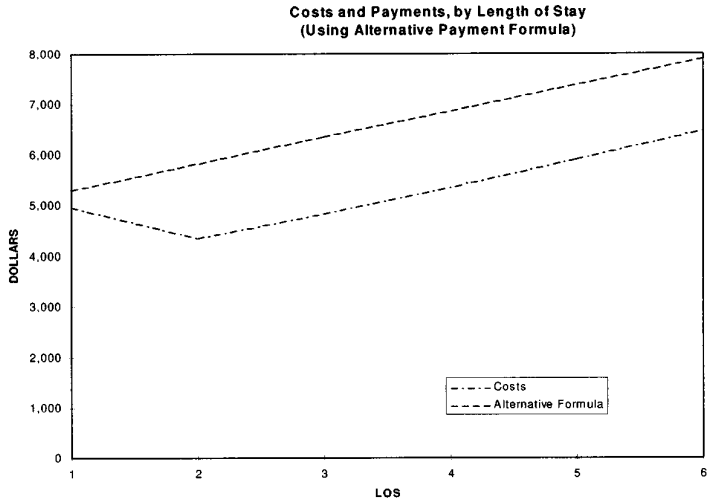




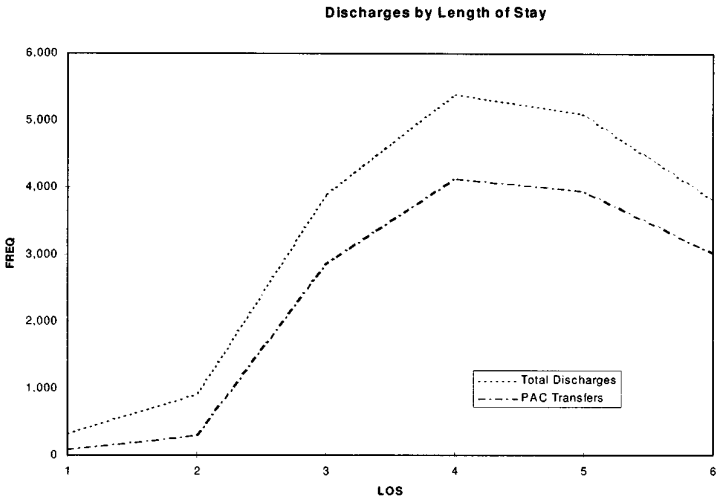
DRG 210
HIP FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC (SURGICAL)

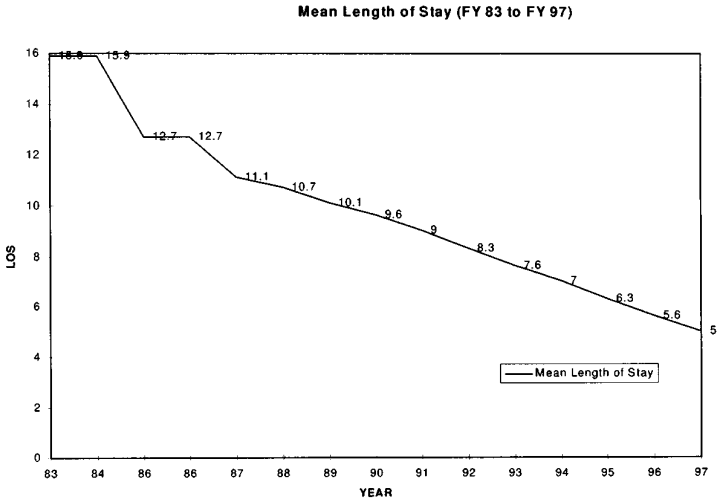


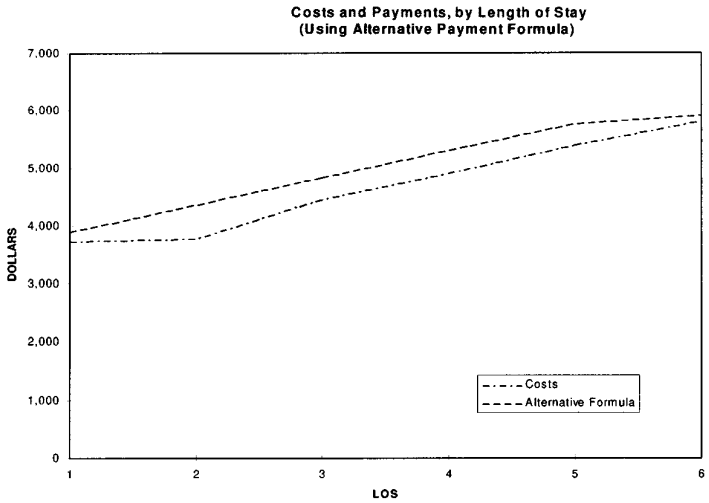




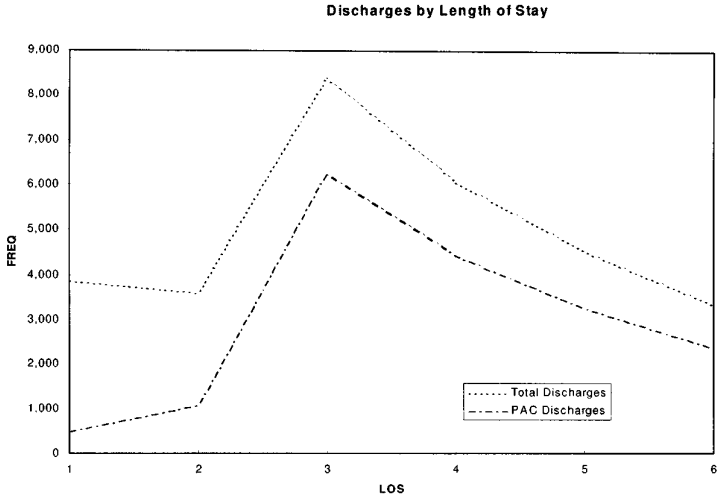
DRG 211
HIP FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC (SURGICAL)

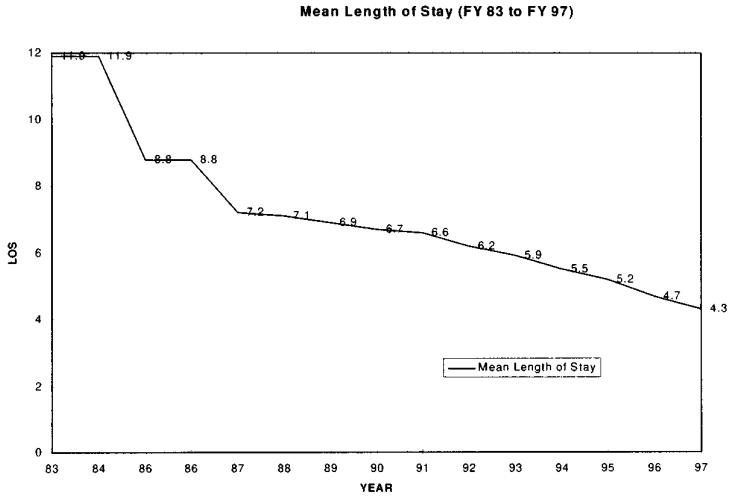


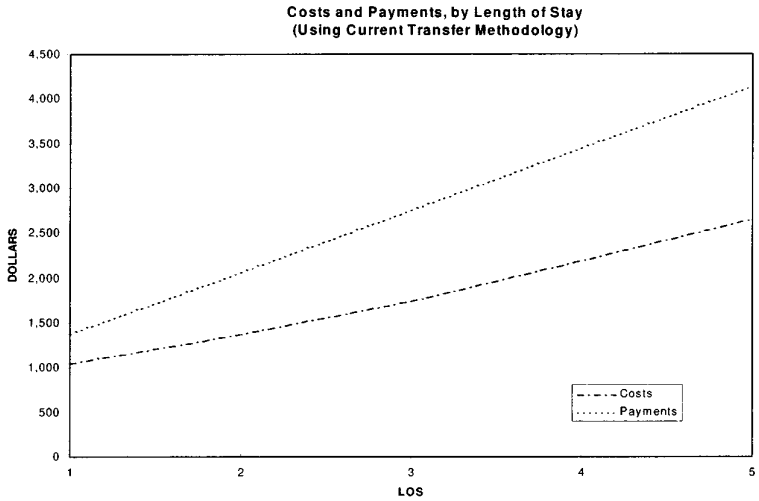




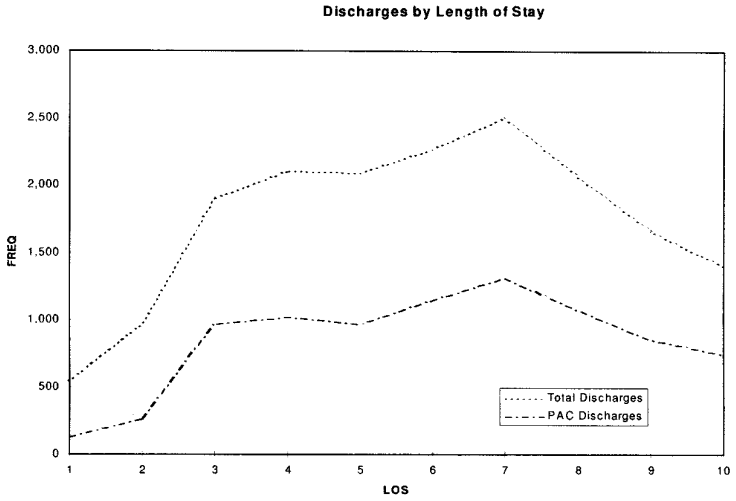
DRG 236
FRACTURE OF HIP PELVIS (MEDICAL)

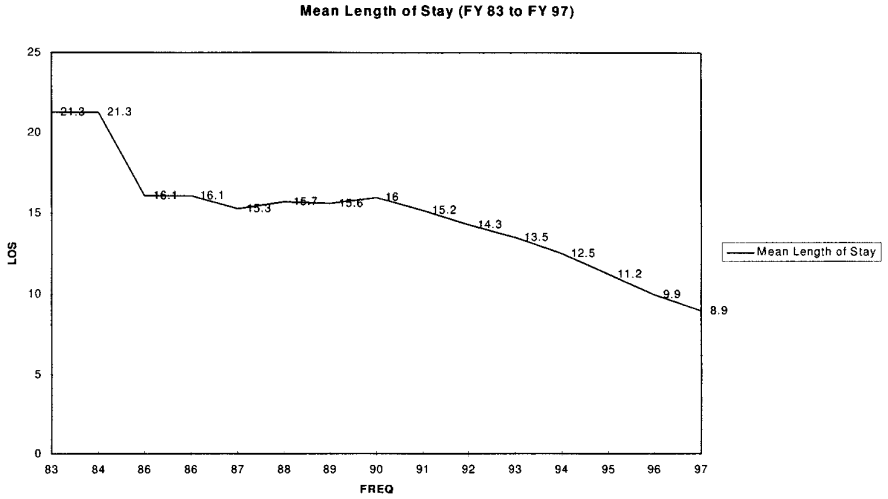


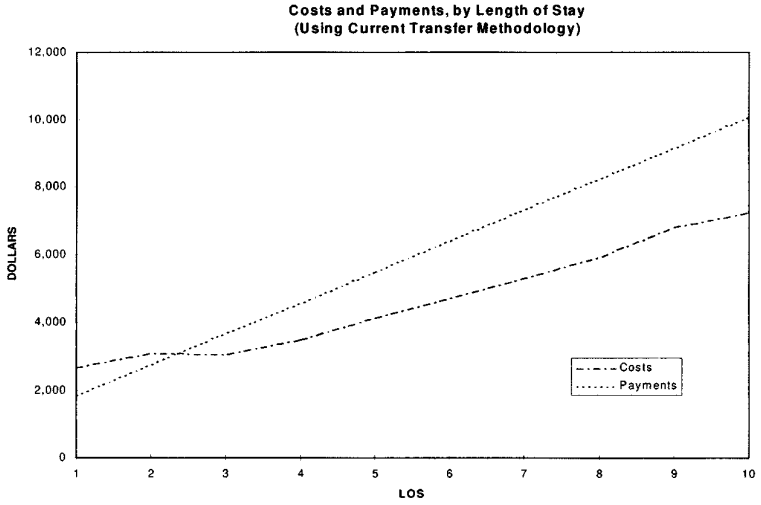




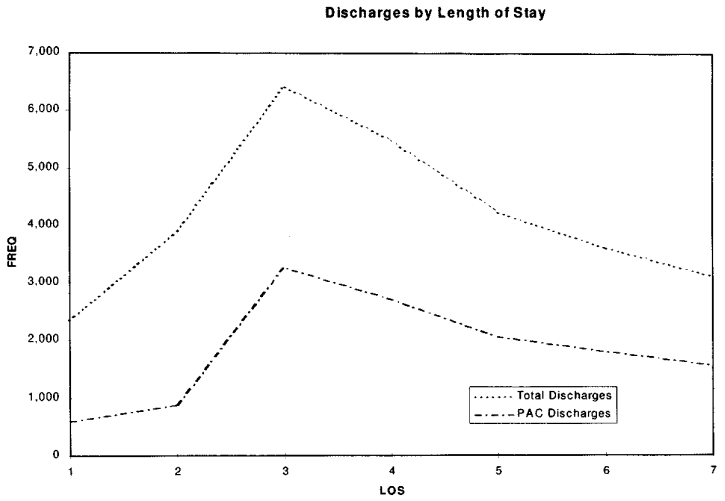
DRG 263
SKIN GRAFT AND/OR DEBRIDEMENT FOR SKIN ULCER OR CELLULITIS WITH CC (SURGICAL)

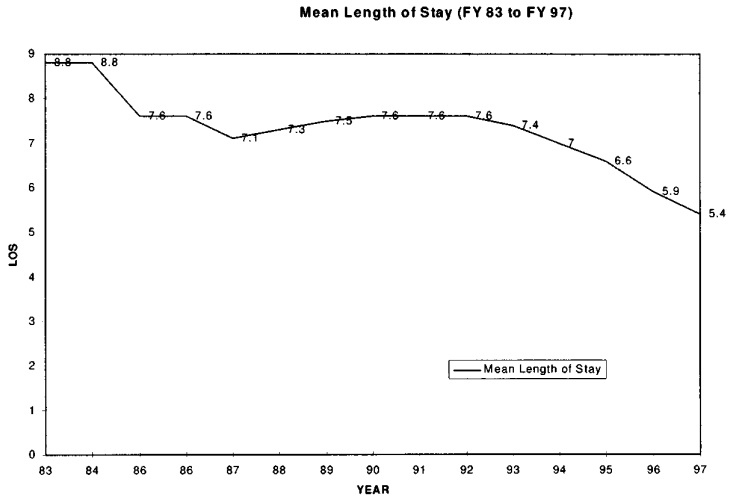


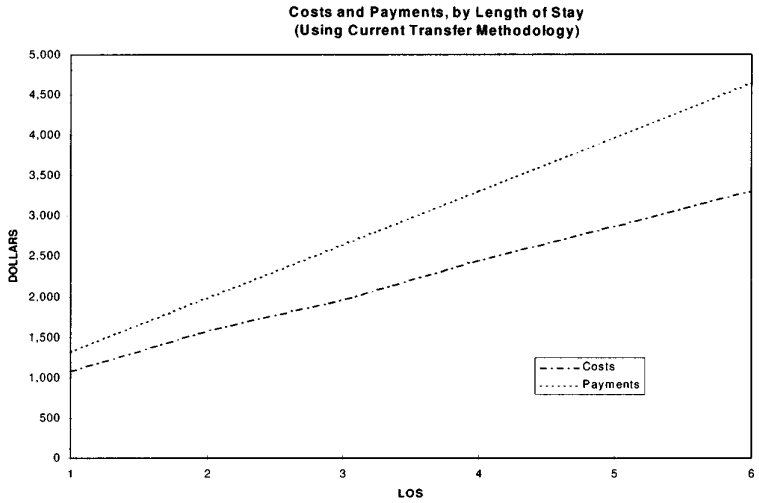




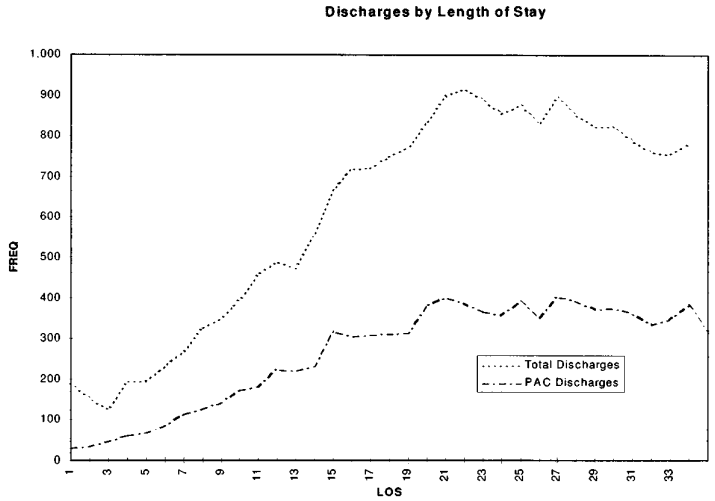
DRG 429
ORGANIC DISTURBANCES MENTAL RETARDATION (MEDICAL)

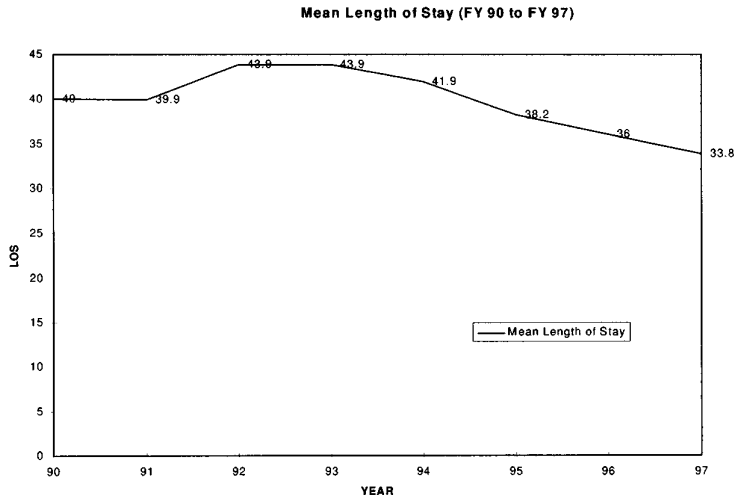


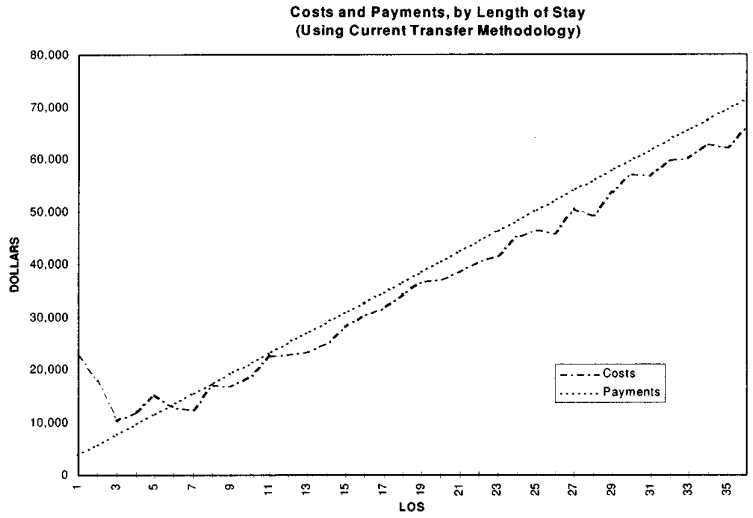




DRG 483
TRACHEOSTOMY EXCEPT FOR FACE, MOUTH, NECK DIAGNOSES (SURGICAL)







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BILLING CODE 4120–03–C

federal register

Friday
May 8, 1998

Part IV

Federal Housing Finance Board

12 CFR Parts 935, and 970

Community Investment Cash Advance Programs and Federal Home Loan Bank Standby Letters of Credit; Proposed Rules

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 935, and 970

[No. 98–16]

RIN 3069–AA75

Community Investment Cash Advance Programs

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing a rule establishing a general framework under which the Federal Home Loan Banks (Bank) may establish community investment cash advance (CICA) programs in addition to their Affordable Housing Programs (AHP) and Community Investment Programs (CIP). The proposed rule does not require a Bank to establish CICA programs. It is intended to provide the Banks with an outline of what the Finance Board has determined will meet the statutory requirement that CICA programs support community investment.

The proposed rule is intended to establish one set of general standards governing all CICA programs, including the Banks' CIPs. The proposed rule, however, does not apply to a Bank's AHP, which is governed specifically by part 960 of the Finance Board's regulations. In addition to establishing a general outline for CICA programs, the proposed rule establishes standards for two specific CICA programs a Bank may establish: the Rural Development Advances (RDA) and the Urban Development Advances (UDA) programs. The proposed standards for the RDA and the UDA programs are intended to create a safe harbor for programs that the Finance Board would consider to meet the statutory requirement that CICA programs support community investment. A Bank will not be required to obtain prior Finance Board approval of CICA programs the Bank may create. However, all such programs will be subject to review through the examination process to determine whether they support what the Finance Board considers to be community investment financing.

DATES: Comments on this proposed rule must be received in writing on or before August 6, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, Market Research, (202) 408–2537, Stanley Newman, Associate Director, Market Research, (202) 408–2812, or Diane E. Dorius, Associate Director, Program Development, (202) 408–2576, Office of Policy; or Brandon B. Straus, Senior Attorney-Advisor, (202) 408–2589, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Banks currently have broad authority under section 10(a) of the Federal Home Loan Bank Act (Bank Act) and part 935 of the Finance Board's regulations to make advances in support of housing finance, including housing for very low-, low- and moderate-income families. *See* 12 U.S.C. 1430(a); 12 CFR part 935. Furthermore, in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress required the Banks to create two specific programs, the AHP and the CIP, to provide advances in support of unmet housing finance and economic development credit needs. *See* Pub. L. 101–73, section 721, 103 Stat. 183 (Aug. 9, 1989).

The AHP is a subsidy program through which the Banks support the finance of affordable owner-occupied and rental housing. *See* 12 U.S.C. 1430(j). The Finance Board first issued implementing regulations for the AHP in 1990. *See* 12 CFR Part 960.

The CIP is a program through which the Banks provide advances to members at cost to support the financing of housing benefiting families with incomes at or below 115 percent of the area median income and economic development activities benefiting families with incomes at or below 80 percent of the area median income. *See* 12 U.S.C. 1430(i)(2). The Finance Board previously has not promulgated regulations implementing the CIP.

Section 10(j)(10) of the Bank Act authorizes the Banks to establish CICA programs in addition to the CIP and the AHP to support ''community investment.'' *See id.* section 1430(j)(10). The Finance Board has not previously promulgated regulations or other specific guidance on what kinds of Bank lending are permitted under this authority.

Since the establishment of the Banks' statutory authority to make advances for community investment under FIRREA, the Banks have provided relatively less long-term credit for economic development projects than for housing, and all of the Banks' economic development lending has been done under their CIP authority, as opposed to their authority to establish other CICA programs. In the past eight years, the Banks have provided $18.1 billion in CIP advances to finance 368,359 housing units. Only 25 percent of those units have been multifamily or rental units that often provide housing for lower-income families and are usually more difficult to finance than single-family owner-occupied housing. In addition, only $751 million or 4 percent of CIP advances have financed economic development projects. Furthermore, CIP advances are not available to the Banks' nonmember borrowers. *See id.* section 1430(i)(1).

The Finance Board believes there is a need for long-term financing for economic development in urban and rural areas that is not being met by members using the CIP. The Banks can help to meet this need through the establishment of other CICA programs to provide long-term financing for economic development through both members and nonmember borrowers. Therefore, the Finance Board now is proposing to establish standards defining the kinds of housing and economic development activities that constitute ''community investment'' eligible to be financed by advances under section 10(j)(10) of the Bank Act. This proposed rule does not require a Bank to establish a CICA program; it is intended to provide the Banks with an outline of what the Finance Board has determined will meet the statutory requirement for ''community investment'' under section 10(j)(10). *See id.* However, all such programs will be subject to review through the examination process to determine whether they support what the Finance Board considers to be community investment financing, in compliance with the statutory requirement.

The Finance Board specifically requests comment on whether it should establish CICA standards, in whole or in part, in a form other than a regulation. Would establishing such standards in the form of a policy statement or guidelines be a more effective means of achieving the goal of promoting the Banks' support for community investment financing, and if so, why? The Finance Board is interested particularly in the comments of the potential users of CICA program advances, *i.e.*, members and nonmember borrowers, as well as the potential end users of CICA-financed credit products, such as developers of housing and commercial properties.

II. Analysis of Proposed Rule

A. Overview

The proposed rule adds a new Part 970 to the Finance Board's regulations. Part 970 establishes a framework for the Banks to create CICA programs to provide advances to members, nonmember borrowers, or both, who in turn use the advances to provide long-term financing for housing and economic development projects that benefit families with incomes at or below a targeted income level, as established by a Bank to address unmet community investment credit needs. Projects with unmet credit needs are those for which financing is not generally available, or is available at lower levels or under less attractive terms.

B. Annual CICA Program Goals—Section 970.3

Each Bank should undertake a deliberate decision making process to determine how much community investment credit it intends to make available each year, through its CIP and other CICA programs, and the kinds of projects to which that credit should be directed. As discussed above, the current focus of the Banks' community investment lending efforts has been through volume lending under the CIP in support of home mortgage loans, to the relative exclusion of economic development financing. The Banks' concentration on funding large volumes of CIP-eligible home mortgage loans may have been encouraged by the CIP target system established in the past by the Finance Board, which was based on a Bank's average annual outstanding CIP advances. The Finance Board wishes to reverse this trend and to encourage the Banks to shift their focus from the overall volume of CIP advances to maximizing the impact of individual advances. Although the Bank Act does not expressly state that a Bank may establish limits on the amount of CIP advances it makes, the Finance Board believes that because the CIP is a no-profit program for the Banks, the supply of CIP advances is necessarily limited. Consequently, as discussed further below, the proposed rule makes clear each Bank's authority to determine the appropriate amount of CIP credit to make available on an annual basis. However, with the authority to limit the amount of available CIP credit comes the obligation to target how the opportunity cost associated with CIP advances is to be used most effectively in relation to the kinds of CIP projects the Bank funds.

As discussed above, the Banks provide CIP advances to members at cost. *See id.* Therefore, where a Bank funds a member's mortgage lending with CIP advances, there is an opportunity cost to the Bank to the extent the Bank could have used regular advances to fund the transaction. CIP advances should be used to fund those loans and projects where the opportunity cost associated with the advance makes the most difference to the member or the project. The Banks have ample authority to make regular advances to support home mortgage lending currently being undertaken by members. To the extent that CIP capacity is made available by substituting regular advances funding, where appropriate, for home mortgage lending that is currently being funded under the CIP, a Bank can redirect the CIP to meeting unmet housing and economic development credit needs.

In order to implement these concepts, § 970.3 of the proposed rule provides that a Bank may establish an annual budget for the cumulative discount the Bank intends to make available under its CIP and other CICA programs (excluding AHP) the Bank may establish. The budget should be based upon the Bank's projected annual totals of CIP advances and other CICAs that the Bank intends to make, and the extent to which the Bank intends to provide a pricing discount, if any, for such other CICAs. A Bank also may include pricing discounts the Bank intends to offer for letters of credit in support of targeted economic development financing. In determining projected annual totals for CIP and other CICA program advances, a Bank should take into account its earnings. If a Bank establishes a budget for the cumulative discount available under its CICA programs, the Bank also should establish standards for allocating the discount among specific types of eligible housing finance and economic development activities. In the absence of such a budget, the Bank must fund requests from qualified members or nonmember borrowers for any advances that otherwise meet the requirements of the Bank's CIP or any other CICA Program the Bank may create.

A Bank's determination as to how much CIP credit to make available annually must be based upon the extent to which the Bank intends to make community investment credit available under other CICA programs. In the case of CIP advances, each Bank must establish a strategy for providing CIP advances to support financing for housing and economic development projects that is otherwise not generally available, or is available at lower levels or under less attractive terms. For example, CIP advances could be directed to housing projects designed to improve the affordability of the housing through lower downpayments, longer term financing, and use of subsidies from other sources, or projects involving homebuyer counseling. A Bank's strategy may include the establishment of partnerships with government and private entities that provide funds to projects in conjunction with CIP advances and other CICAs in order to further reduce the cost of such financing. In developing its strategy, a Bank must consult with urban and rural economic development organizations in the Bank's District and the Bank's Advisory Council. The Finance Board requests comments on how information about a Bank's CIP and other CICA programs, including any projected annual totals for advances under such programs, could best be disseminated to Bank members and nonmember borrowers, as well as to other interested members of the public.

C. Definitions—Section 970.4

1. Definition of Benefit

Under each CICA program, a Bank may make advances to support housing and economic development projects that benefit families with incomes at or below a certain targeted income level. The proposed rule uses the same definition of the term ''benefit'' for all CICA programs. Section 970.4 of the proposed rule defines ''benefit'' based on whether the project is for economic development or for housing, and on the form of the housing, such as owner-occupied or rental. Specifically, an economic development project is deemed to benefit families with incomes at or below a targeted income level if: (1) The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level; (2) the project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of Agriculture (in the case of projects located in rural areas); (3) the project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD (in the case of projects located in urban areas); (4) the project is located in a federally declared disaster area; (5) the project involves property eligible for a federal Brownfield Tax Credit; (6) the project is located in an area affected by a federal military base closing or realignment; (7) the project is located in an area identified as a designated

community under the Community Adjustment and Investment Program, which is a joint program of the federal government and the North American Development Bank established in connection with the passage of the North American Free Trade Agreement (NAFTA) to promote economic opportunities in communities that have experienced job losses related to the implementation of the NAFTA; (8) the annual salaries for at least 75 percent of the permanent full-and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; (9) the project qualifies as a small business concern, as defined under the Small Business Act; or (10) more than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level. The Finance Board specifically requests comment on whether measuring the salaries of jobs created by a project is an effective way to determine whether the project benefits families with incomes at or below a targeted level.

A housing project is deemed to benefit families with incomes at or below a targeted income level if the project involves: (1) Owner-occupied units, each of which is purchased or owned by a family with an income at or below the targeted income level; (2) multi-unit, owner-occupied housing in which more than 50 percent of the units are owned or purchased by families with incomes at or below the targeted income level; (3) multifamily rental housing where more than 50 percent of the units in the project will be occupied by, or the rents will be affordable to, families with incomes at or below the targeted income level; or (4) manufactured housing parks where either substantially all of the resident families have incomes at or below the targeted income level, or the project is located in a neighborhood where more than 50 percent of the families have incomes at or below the targeted income level.

2. Forms of Financing

Section 10(i)(1) of the Bank Act requires the Banks to establish a CIP to provide funding for members, who in turn, provide loans to finance CIP-eligible activities. *See id.* section 1430(i)(1). Most of the Banks have implemented this statutory requirement by providing advances to members to fund the origination of loans financing CIP-eligible activities. The proposed rule adopts a more expansive reading of the meaning of the statutory language authorizing CIP advances to be used by members to ''provide loans.'' *See id.* Specifically, the proposed rule authorizes CIP advances and other CICA advances to be used not only to fund CICA-eligible loan originations but also to purchase mortgage revenue bonds (MRB) and mortgage-backed securities (MBS) where all of the loans financed by such bonds and all of the loans backing such securities are CICA-eligible loans. *See* proposed § 970.3 (definition of ''providing financing''). The proposed rule also authorizes CICA advances to be used by members to create or maintain a secondary market for loans, where all such loans are CICA-eligible loans. The Finance Board believes that these are additional means of providing loans for the financing of CICA-eligible activities, in accordance with the intent of the statute, because they create liquidity in the market for CICA-eligible loans.

3. Income Limits

The Bank Act does not specifically require the income limits for the CIP or other CICA programs to be based on median income data published by the Department of Housing and Urban Development (HUD). A ''low-or moderate-income household'' is defined in the Bank Act as a household with an income of 80 percent or less of the area median income. *See* 12 U.S.C. 1430(j)(13)(B). A ''low-or moderate-income neighborhood'' is defined as a neighborhood in which 51 percent or more of the households are low-or moderate-income households. *See id.* section 1430(j)(13)(C).

For purposes of the Banks' AHPs, the Finance Board permits each Bank to choose among several median income standards for owner-occupied and rental projects. See 12 CFR 960.1. In the case of owner-occupied projects, ''area median income'' may be defined as: (1) The median income for the area, as published annually by HUD; (2) the applicable median family income, as determined under the mortgage revenue bond program set forth in 26 U.S.C. 143(f) and published by a State agency or instrumentality; (3) the median income for the area, as published by the United States Department of Agriculture; or (4) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP. *See id.* In the case of rental projects, ''area median income'' may be defined as: (1) the median income for the area, as published annually by HUD; or (2) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP. *See id.* In order to provide uniformity between the AHP and other CICA programs, the proposed rule permits a Bank, for purposes of its CICA programs, to choose among the median income standards identified in the AHP regulation. The Finance Board specifically requests comments on defining income limits for CICA programs based upon median income data other than that published annually by HUD.

D. Provisions Governing the CIP—Section 970.5

As discussed above, the Finance Board has not previously issued a regulation governing the CIP. The Banks currently operate their CIPs under the applicable statutory provisions in section 10(i) of the Bank Act. *See* 12 U.S.C. 1430(i). The Finance Board has provided some interpretations of section 10(i) in instances where there is ambiguity in the statutory provisions, and in the absence of Finance Board interpretations, the Banks have made their own interpretations for purposes of program implementation. This process of experimentation among the Banks in the context of the CIP, closely monitored by the Finance Board, was useful in the beginning of the program. It also has resulted in inconsistencies among the Banks in the implementation of the program, and left many questions unanswered. Consequently, the proposed rule is intended to establish one set of standards governing all CICA programs, taking into account the specific statutory requirements governing the CIP, previous interpretations, and other questions of which the staff is aware.

1. Housing Projects

Section 10(i)(2)(A) and (B) of the Bank Act authorize the Banks to finance: (1) Home purchases by families whose income does not exceed 115 percent of median income for the area, and (2) the purchase or rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area. *See id.* sections 1430(i)(2)(A), (B). Section 970.5(b) of the proposed rule implements this provision by defining the following housing activities that qualify for CIP financing : (1) the purchase or construction of owner-occupied housing

units; (2) the purchase or rehabilitation of rental housing; (3) the purchase or rehabilitation of manufactured housing parks; and (4) the purchase or rehabilitation of housing for the homeless.

While manufactured housing parks have aspects of both owner-occupied and rental housing projects, they do not fit clearly within the categories for single-family or rental housing projects described under the CIP provisions of the Bank Act. Furthermore, ensuring that the population of occupants in a manufactured housing park meets the relevant income eligibility requirements for the CIP is more difficult than in the context of financing other kinds of housing. For instance, most occupants of manufactured housing located in such parks own their homes but rent the space on which their homes are located. Verification of income is not a usual practice in the course of renting space to the owner of a manufactured home. Therefore, it is difficult to verify that the resident families in a manufactured housing park are income-eligible.

Nonetheless, the Finance Board believes that the financing of manufactured housing parks should be permitted under the CIP and other CICA programs. Consequently, under § 970.4 of the proposed rule, a manufactured housing park is deemed to benefit families with targeted incomes if either: (1) substantially all of the resident families have incomes at or below the targeted income level, or (2) the project is located in a neighborhood where more than 50 percent of the families have incomes at or below the targeted income level. The latter criterion is intended as a proxy for the requirement that each resident family is income-eligible.

2. Economic Development Projects

Section 10(i)(2)(C) of the Bank Act authorizes CIP funding to be used to finance commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low-and moderate-income neighborhoods. *See id.* § 1430(i)(2)(C). The proposed rule implements this provision by defining the kinds of economic development activities that qualify for CIP financing.

Section 970.4 of the proposed rule defines ''economic development projects'' as: (1) commercial, manufacturing, social service, and public facility projects and activities; and (2) the construction or rehabilitation of public or private infrastructure, such as roads, utilities, and sewers. In order to be CIP-eligible, a loan must finance an economic development project that benefits families with incomes at or below 80 percent of the area median income. As discussed above, an economic development project is deemed to benefit such families if it meets the definition of ''benefit'' under § 970.4 of the proposed rule.

3. Use of CIP Advances for Refinancing

Section 970.5(d) clarifies that a member may use CIP advances to provide refinancing for owner-occupied and rental housing projects provided that the proceeds of any equity taken out of such projects are used to rehabilitate the projects or to preserve affordability for current residents. Where refinancing is done to preserve affordability for current residents, there is no requirement that continued affordability be monitored subsequent to the refinancing. The proposed rule also provides that CIP advances may be used to refinance economic development projects. For economic development projects, there is no limitation on the use of the proceeds of any equity taken out of the project.

4. Pricing of CIP Advances

Section 10(i)(1) of the Bank Act provides that CIP advances shall be priced at the cost of Bank consolidated obligations of comparable maturities, taking into account reasonable administrative costs. *See id.* section 1430(i)(1). The statute does not define reasonable administrative costs. Section 935.7 of the Finance Board's regulation on Bank Advances codifies the statutory pricing requirement for CIP advances without material change. *See* 12 CFR 935.7

A survey of the Banks' CIP policies in 1996 indicated that the Banks have adopted a variety of CIP pricing policies under § 935.7 of the Advances regulation. *See id.* Four Banks priced CIP advances at their cost of funds, and two Banks priced CIP advances at five basis points over their cost of funds. Two banks priced CIP advances 12 to 35 basis points below the price of regular Bank advances, depending upon the maturity of the advance. It is estimated that, on average, CIP advances are priced approximately 25 basis points below the price of regular Bank advances.

The proposed rule amends the language of existing § 935.7 of the Advances regulation by clarifying that in pricing CIP advances, a Bank may take into account only those administrative costs necessary for the operation of its CIP, not administrative costs attributable to other Bank operations. Furthermore, the price of CIP advances shall be lower than the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Bank Act. *See* 12 U.S.C. 1430(a). The proposed rule moves the CIP pricing provision from existing § 935.7 of the Advances regulation to new § 970.5 of the CICA regulation.

According to the 1996 survey of the Banks' CIP policies, four Banks varied CIP pricing based on the kinds of projects being financed and the income levels of the households benefiting from the project, for instance, projects that benefit families with incomes at or below 80 percent of the area median income. One Bank provided lower pricing for members that have been assigned a rating of outstanding under the Community Reinvestment Act. *See id.* sections 2901 *et seq.* The Finance Board requests comment on whether the regulation should contain a list of factors such as these that could be the basis for deeper CIP discounts by the Banks.

5. Pricing Pass-through

The statutory provisions governing the CIP do not require members that obtain CIP advances to pass on the benefit of the pricing differential between CIP advances and regular Bank advances to the owners or occupants of CIP-financed housing or businesses. The 1996 survey of the Banks' CIP pricing policies indicated that two Banks specifically required such a pass-through and four Banks encouraged a pass-through. Section 970.5(g) of the proposed rule provides that a Bank may, in its discretion, require members receiving CIP advances to pass through the benefit of the pricing differential of the CIP advance to the member's borrower.

E. Provisions Governing Other CICA Programs Established By A Bank—Section 970.6 and Section 970.7

1. RDA and UDA Programs—Section 970.6

As discussed above, the RDA and UDA programs are CICA programs a Bank may establish to provide financing for economic development projects in rural or urban areas, respectively. Section 970.6(a) of the proposed rule authorizes each Bank to establish an RDA program to provide advances to its members, nonmember borrowers, or both to finance economic development projects in rural areas that benefit families with incomes at or below 115 percent of the area median income. Section 970.6(b) of the proposed rule authorizes a Bank to establish a UDA program to provide advances to its

members, nonmember borrowers, or both to finance economic development projects in urban areas that benefit families with incomes at or below 100 percent of the area median income. As discussed above, the proposed standards for the RDA and the UDA are intended to create safe harbor programs that the Finance Board considers to meet the statutory requirement that CICA programs support ''community investment.'' *See id.* section 1430(j)(10).

The RDA is intended to benefit a population that is not targeted under the CIP, which has an income eligibility standard of 80 percent of area median income for economic development projects. *See id.* section 1430(i)(2)(C). The UDA program, which is intended to benefit families with incomes at or below 100 percent of the area median income, also is intended to reach a population not targeted by the CIP. Due to generally higher median incomes in urban areas, this standard, although numerically lower than the income eligibility standard for the RDA program, reaches families with higher incomes.

In cases where a UDA or an RDA project has a housing component, only the economic development portion of the project must be designed to benefit families with targeted income levels.

The proposed rule permits the Banks to price RDAs and UDAs either as regular advances or at rates below the price of regular advances of similar amounts, maturities and terms. Permitting the Banks to price UDAs and RDAs as regular advances may provide them with a financial incentive to make such advances. The Banks have the option to provide reduced pricing for RDAs and UDAs in order to provide members and nonmember borrowers with a financial incentive to undertake the kinds of financing described in the RDA and UDA programs.

2. Other CICA Programs—Section 970.7

Section 970.7 of the proposed rule establishes minimum requirements for CICA programs a Bank may wish to establish that do not conform to the requirements of the RDA and UDA programs. A Bank may establish such other CICA programs to provide advances to finance community investment for economic development and housing. Projects that involve a combination of economic development and housing must meet the appropriate targeting standards for the economic development and housing components of such projects, respectively.

a. Economic Development Projects. Under proposed § 970.7(b), a Bank may establish a CICA program to provide financing for economic development projects benefiting families with incomes at or below a level established by the Bank to address unmet economic development credit needs.

b. Housing projects. Under proposed § 970.7(c), a Bank may establish a CICA program to provide financing for housing projects involving the acquisition, construction, rehabilitation, or refinancing of owner-occupied and rental housing, as well as manufactured housing parks and housing for the homeless. In the case of refinancing, the refinancing must be necessary to preserve affordability for the current residents of a rental housing project or the current owners of owner-occupied housing.

As in the case of economic development projects, the Bank must establish an income eligibility level at or below a level targeted to address unmet housing credit needs. Proposed § 97076(c)(2) makes clear that the financing of predevelopment costs for eligible housing also is permitted.

c. Pricing of other CICA program advances. As under the provisions governing the RDA and UDA programs, § 970.7(f) of the proposed rule permits the Banks to price other CICA advances either as regular advances or below regular advances.

d. Prior Finance Board approval not required. As discussed above, a Bank is not required to obtain prior Finance Board approval of a CICA program it establishes under § 970.7. However, such programs will be subject to review through the examination process to determine whether they support what the Finance Board considers to be community investment financing, in compliance with the Bank Act.

F. Limits on Access to CICA Advances—Section 970.8

Section 7(j) of the Bank Act provides that the board of directors of each Bank shall administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member borrower. *See* 12 U.S.C. 1427(j). Section 970.8 of the proposed rule is intended to make clear that any limitations established by a Bank upon members' or nonmember borrowers' access to CIP or other CICA advances must comply with the statutory nondiscrimination requirement in section 7(j) of the Bank Act.

G. Conforming Amendments to the Finance Board's Advances Regulation

The proposed rule makes conforming amendments to the Advances regulation in order to make clear that a Bank may make long-term advances for the purpose of financing lending and investment activities that meet the requirements of a CICA Program, including economic development activities. Specifically, the proposed rule amends the existing definition of ''residential housing finance assets'' in § 935.1 of the Advances regulation to include loans or investments financed by CICA Program advances. The proposed rule also revises several existing provisions of the Advances regulation on the use of long-term advances under the CIP in order to make clear that these provisions apply to all CICA Programs, not just the CIP. *See id.* §§ 935.13, 935.14. In addition, the proposed rule replaces the existing definition of ''Community Investment Program'' with a new definition of ''Community Investment Cash Advance Program,'' which, as discussed above, includes the CIP.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 935

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

12 CFR Part 970

Credit, Federal home loan banks, Housing.

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby proposed to be amended, as set forth below:

Subchapter B—Federal Home Loan Bank System

PART 935—ADVANCES

1. The authority citation for Part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1) 1426, 1429, 1430; 1430b, and 1431.

2. Section 935.1 is amended by adding in alphabetical order the following definition of ''Community Investment Cash Advance Program'', by removing the definition of ''Community Investment Program'', and in the definition of ''Residential housing

finance assets'' by republishing the introductory text and in paragraph (4), to read as follows:

§ 935.1 Definitions.

* * * * *

Community Investment Cash Advance Program or *CICA Program* has the same meaning as in part 970 of this chapter.

* * * * *

Residential housing finance assets means any of the following:

* * * * *

(4) Loans or investments financed by advances made pursuant to a CICA program;

* * * * *

§ 935.7 [Removed and reserved]

3. Section 935.7 is removed and reserved.

4. Section 935.13 is amended by revising paragraph (a)(5) to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) * * *

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for CICA Program advances.

* * * * *

5. Section 935.14 is amended by revising paragraph (b)(2) to read as follows:

§ 935.14 Limitations on long-term advances.

* * * * *

(b) * * *

(2) Applications for CICA Program advances are exempt from the requirements of paragraph (b)(1) of this section.

6. Subchapter F, consisting of part 970, is added to chapter IX to read as follows:

Subchapter F—Community Investment

PART 970—Community Investment Cash Advance Programs

Sec.

970.1 Scope.
970.2 Purpose.
970.3 Annual CICA Program goals.
970.4 Definitions.
960.5 Community Investment Program.
970.6 Rural and Urban Development Advances Programs.
970.7 Other Community Investment Cash Advance programs.
970.8 Limits on access to CICA Program advances.
970.9 Reporting.

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 970.1 Scope.

Sections 10(i) and (j) of the Act require the Banks to establish an Affordable Housing Program (AHP) and a Community Investment Program (CIP). (*See* 12 U.S.C. 1430(j), (i)). Section 10(j)(10) of the Act authorizes the Banks to establish community investment cash advance (CICA) programs in addition to the AHP and the CIP. (*See* 12 U.S.C. 1430(j)(10)). This part establishes requirements for a Bank's CIP and for other CICA programs established by a Bank. The requirements of this part do not apply to a Bank's AHP, which is governed specifically by part 960 of this chapter.

§ 970.2 Purpose.

The purpose of this part is to identify targeted community investment activities the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Act. (12 U.S.C. 1430(j)(10). Advances made under a CICA program are to be used in support of financing for housing and economic development activities that benefit income-targeted families. This part establishes the general framework under which a Bank may create CICA programs in support of community investment financing. This part establishes regulations for advances made under a Bank's statutorily mandated CIP. This part also sets forth standards governing other CICA programs a Bank may establish, including two specific CICA programs a Bank may establish: Rural Development Advances (RDA) and Urban Development Advances (UDA) programs.

§ 970.3 Annual CICA Program goals.

A Bank may establish an annual budget for the cumulative discount the Bank intends to make available under its CIP and other CICA programs (excluding AHP) the Bank may establish. The budget should be based upon the Bank's projected annual totals of CIP advances and other CICAs that the Bank intends to make, and the extent to which the Bank intends to provide a pricing discount, if any, for such other CICAs. A Bank also may include pricing discounts the Bank intends to offer for letters of credit in support of targeted economic development financing. In determining projected annual totals for CIP and other CICA program advances, a Bank should take into account its earnings. If a Bank establishes a budget for the cumulative discount available under its CICA programs, the Bank also should establish standards for allocating the discount among specific types of eligible housing finance and economic development activities. In the absence of such a budget, the Bank must fund must fund requests from qualified members or nonmember borrowers for any advances that otherwise meet the requirements of the Bank's CIP or any other CICA Program the Bank may create. Each Bank shall establish a strategy for providing CIP advances to support financing for housing and economic development projects that is otherwise not generally available, or is available at lower levels or under less attractive terms. A Bank's strategy may include the establishment of partnerships with government and private entities that provide funds to projects in conjunction with CIP and other CICA advances in order to further reduce the cost of such financing. In developing its strategy, a Bank must consult with urban and rural economic development organizations in the Bank's District and with the Bank's Advisory Council.

§ 970.4 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Advance means a loan to a member from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

AHP means the Affordable Housing Program, the CICA Program mandated by section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of this chapter.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Benefit. (1) *Economic development projects.* An economic development project is deemed to *benefit* families with incomes at or below a targeted income level if:

(i) The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of Agriculture (in the case of projects located in rural areas);

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the

Secretary of HUD (in the case of projects located in urban areas);

(iv) The project is located in a federally declared disaster area;

(v) The project involves property eligible for a federal Brownfield Tax Credit;

(vi) The project is located in an area affected by a federal military base closing or realignment;

(vii) The project is located in an area identified as a designated community under the Community Adjustment and Investment Program;

(viii) The annual salaries for at least 75 percent of the permanent full-and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level;

(ix) The project qualifies as a small business; or

(x) More than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level.

(2) *Housing projects.* A housing project is deemed to *benefit* families with incomes at or below a targeted income level if the project involves:

(i) Owner-occupied units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(ii) Multi-unit, owner-occupied housing in which more than 50 percent of the units are owned or purchased by families with incomes at or below the targeted income level;

(iii) Rental housing where more than 50 percent of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(iv) Manufactured housing parks where:

(A) Substantially all of the resident families have incomes at or below the targeted income level; or

(B) The project is located in a neighborhood where more than 50 percent of the families have incomes at or below the targeted income level.

Board of Directors means the Board of Directors of the Finance Board.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of Agriculture as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

CICA or *Community Investment Cash Advance* means an advance made pursuant to a CICA program.

CICA Program or *Community Investment Cash Advance program* means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) A Bank's RDA program;

(4) A Bank's UDA program; and

(5) Any other cash advance program established by a Bank that meets the requirements of § 970.6.

CIP means a Bank's Community Investment Program, the CICA Program mandated by section 10(i) of the Act (12 U.S.C. 1430(i)).

Community investment means housing finance and economic development projects that benefit families with incomes at or below a targeted income level.

Economic development projects means:

(1) Commercial, manufacturing, social service, and public facility projects and activities; and

(2) The construction or rehabilitation of public or private infrastructure, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Finance Board means the agency established as the Federal Housing Finance Board.

HUD means the Department of Housing and Urban Development.

Median income for the area. (1) *Owner-occupied housing projects and economic development projects.* For purposes of owner-occupied housing projects and economic development projects, *median income for the area* means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the United States Department of Agriculture; or

(iv) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) *Rental housing projects.* For purposes of rental projects, median income for the area means:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(3) *Procedure for approval.* Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county;

(4) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village; or

(5) A geographic location designated in comprehensive plans, ordinance, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember borrower means an entity certified as a nonmember mortgagee pursuant to § 935.22(b) of this chapter.

Provide financing means:

(1) Originating loans;

(2) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities meet the eligibility requirements of the program under which the member or nonmember borrower receives an advance; and

(3) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the program under which the member or nonmember borrower receives an advance.

RDA or *Rural Development Advance* means an advance made pursuant to an RDA program.

RDA program or *Rural Development Advance program* means a program established by a Bank meeting the requirements of § 970.6(a).

Rural area means:

(1) A unit of general local government or an unincorporated place outside a Metropolitan Statistical Area (MSA), as defined by the U.S. Bureau of the Census, that has a population of less than 30,000; or

(2) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village.

Small business means a ''small business concern,'' as that term is

defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

UDA or *Urban Development Advance* means an advance made pursuant to a UDA program.

UDA program or *Urban Development Advance program* means a program established by a Bank meeting the requirements of § 970.6(b).

Urban area means a unit of general local government or an unincorporated place that is:

(1) Within an MSA; or

(2) Outside an MSA and has a population of more than 30,000.

§ 970.5 Community Investment Program.

(a) *In general.* Each Bank shall establish a CIP to make advances to its members to provide financing, as defined in § 970.4, for eligible community investment projects. (Nonmember borrowers are not eligible to receive CIP advances.)

(b) *Housing projects.* A Bank may provide CIP advances to finance the following kinds of housing projects, provided that such projects benefit families with incomes at or below 115 percent of the median income for the area of a family of four:

(1) The purchase or construction of owner-occupied housing units;

(2) The purchase or rehabilitation of rental housing;

(3) The purchase or rehabilitation of manufactured housing parks; and

(4) The purchase or rehabilitation of housing for the homeless.

(c) *Economic development projects.* A Bank may provide CIP advances to finance economic development projects that benefit families with incomes at or below 80 percent of the median income for the area of a family of four.

(d) *Refinancing.* A Bank may provide CIP advances to refinance:

(1) Economic development projects described in paragraph (c) of this section; and

(2) Owner-occupied and multifamily housing and manufactured housing parks described in paragraphs (b)(1) through (b)(4) of this section, provided that the equity proceeds of the refinancing are used to rehabilitate the projects or to preserve affordability for current residents.

(e) *Mixed-use projects.* If a project involves a combination of eligible housing finance and economic development activities, the economic development and housing components of the project must benefit families at the appropriate income levels.

(f) *Pricing of CIP advances*—(1) *In general.* Each Bank shall price its CIP advances as provided in § 935.6 of this chapter, provided that the cost of such advances shall not exceed, and may be lower than, the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs. In pricing CIP advances, a Bank may take into account only those administrative costs necessary for the operation of its CIP.

(2) *Pricing differential.* The price of CIP advances shall be lower than the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act.

(g) *Pricing pass-through.* A Bank may require members receiving CIP advances to pass through the benefit of the pricing differential of the CIP advance to the member's borrower.

§ 970.6 Rural and Urban Development Advances Programs.

(a) *RDA program.* Each Bank may establish an RDA program to provide advances to its members, nonmember borrowers, or both to provide financing, as defined in § 970.4, for economic development projects in rural areas that benefit families with incomes at or below 115 percent of the median income for the area of a family of four.

(b) *UDA program.* Each Bank may establish a UDA program to provide advances to its members, nonmember borrowers, or both to provide financing, as defined in § 970.4, for economic development projects in urban areas that benefit families with incomes at or below 100 percent of the median income for the area of a family of four.

(c) *Mixed-use projects.* If an economic development project financed by a UDA or an RDA involves the financing of housing, only the economic development portion of the project must be designed to benefit families with targeted income levels.

(d) *Pricing of UDAs and RDAs*—(1) *Advances to members.* A Bank shall price UDAs and RDAs to members as provided in § 935.6 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Advances to nonmember borrowers.* A Bank shall price UDAs and RDAs to nonmember borrowers as provided in § 935.24 of this chapter and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b).

§ 970.7 Other Community Investment Cash Advance programs.

(a) *In general.* Each Bank may establish CICA programs in addition to those described in §§ 970.5 and 970.6, to provide advances to its members, nonmember borrowers, or both to finance community investment.

(b) *Economic development projects.* A Bank may make a CICA to a member or nonmember borrower to provide financing, as defined in § 970.4, for economic development projects that benefit families with incomes at or below a targeted income level, as established by the Bank to address unmet economic development credit needs. Projects with unmet economic development credit needs are those economic development projects for which financing is not generally available, or is available at lower levels or under less attractive terms.

(c) *Housing projects.* A Bank may make a CICA to a member or nonmember borrower to provide financing, as defined in § 970.4, for the following kinds of housing projects, provided such projects benefit families with incomes at or below a targeted income level, as established by the Bank to address unmet housing credit needs. Projects with unmet housing credit needs are those housing projects for which financing is not generally available, or is available at lower levels or under less attractive terms:

(1) The acquisition, construction, rehabilitation, or refinancing of:

(i) Owner-occupied housing units;

(ii) Multi-unit, owner-occupied housing;

(iii) Rental housing;

(iv) Manufactured housing parks; and

(v) Housing for the homeless; or

(2) The financing of predevelopment costs for housing described in paragraph (c)(1) of this section.

(d) *Limit on refinancing.* Where a member or nonmember borrower uses a CICA for the purpose of refinancing housing, the refinancing must be necessary to preserve affordability for the current residents of a multifamily rental housing project or the current owners of owner-occupied housing.

(e) *Mixed-use projects.* If a project involves a combination of eligible housing finance and economic development activities, the economic development and housing components of the project must benefit families at the appropriate targeted income levels.

(f) *Pricing of other CICA program advances.*—(1) *Advances to members.* A Bank shall price advances to members made under a CICA program established pursuant to this section as provided in § 935.6 of this chapter, and may price

such advances at rates below the price of advances of similar amounts, maturities, and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Advances to nonmember borrowers.* A Bank shall price advances to nonmember borrowers made under a CICA program established pursuant to this section as provided in § 935.24 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities, and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b).

§ 970.8 Limits on access to CICA program advances.

Any limit established by a Bank upon members' or nonmember borrowers' access to CICA advances shall not discriminate in favor of or against any member.

§ 970.9 Reporting.

(a) *CICA policies.* Each Bank shall submit to the Finance Board annually a copy of the policies governing the Bank's CICA programs.

(b) *Quarterly reports.* Each Bank shall report quarterly to the Finance Board on the Bank's use of CICAs.

Dated: April 22, 1998.

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

Bruce A. Morrison,

Chairman.

[FR Doc. 98–11951 Filed 5–7–98; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 938

[No. 98–17]

RIN 3069–AA61

Federal Home Loan Bank Standby Letters of Credit

AGENCY: Federal Housing Finance Board.

ACTION: Proposed Rule.

SUMMARY: The Federal Housing Finance Board is proposing to codify its existing policies on Federal Home Loan Bank (FHLBank) standby letters of credit into the form of a regulation and to amend these policies to allow for broader use of these products by FHLBank members and eligible nonmember mortgagees. The proposed rule also would eliminate some of the restrictions currently imposed on issuance of standby letters of credit by FHLBanks that limit the usefulness of these products to members and eligible nonmember mortgagees.

DATES: Comments are due on or before August 6, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Diane E. Dorius, Associate Director, Program Development, Office of Policy, (202) 408–2576; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The FHLBanks have been permitted to engage in standby letter of credit (LOC) transactions since 1983, when the predecessor agency to the Federal Housing Finance Board (Finance Board), the former Federal Home Loan Bank Board (FHLBB), first adopted its Policy Guidelines for Issuance of FHLBank Standby Letters of Credit (FHLBB Guidelines). Underlying this policy was a 1983 FHLBB legal opinion which concluded that FHLBank issuance of standby LOCs on behalf of members is permissible under the FHLBanks' authority to make secured advances, set forth in section 10 of the Bank Act, 12 U.S.C. 1430, because a FHLBank standby LOC is the functional equivalent of an advance in that it involves an extension of credit by the FHLBank to its member. Because the FHLBB considered the authority to issue standby LOCs to derive from the authority to make secured advances, the 1983 FHLBB Guidelines, and the 1985 and 1989 revisions thereto, applied the statutory and regulatory requirements pertaining to advances to standby LOC transactions. The substance of the FHLBB Guidelines was maintained when the Finance Board (created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101–73, 103 Stat. 412 (1989), to succeed the FHLBB as regulator of the FHLBanks) adopted its first standby LOC policy in 1991.

FHLBank participation in standby LOC transactions currently is governed by the Finance Board's Interim Policy Guidelines for FHLBank Standby Letters of Credit (Interim Guidelines), which were adopted in 1993. The Interim Guidelines permit FHLBanks to issue or confirm standby LOCs on behalf of members to facilitate: the purchase of, or commitment to purchase mortgage loans; the collateralization of public unit deposits; the collateralization of Internal Revenue Code (IRC) Section 936 deposits (deposits made in Puerto Rican financial institutions by corporations operating in Puerto Rico); interest rate swaps and other transactions that assist a member's asset/liability management; transactions that promote home financing, housing activity, or members' involvement in commercial and economic development activities that benefit low-and moderate-income families or activities that are located in low-and moderate-income neighborhoods (community development); and tax-exempt bonds or notes designed to promote housing or the financing of community development. In addition, the Interim Guidelines permit FHLBanks to issue LOCs on behalf of nonmember mortgagees eligible to obtain advances under section 10b of the Bank Act, 12 U.S.C. 1430b, for transactions that promote home financing, housing activity, and community development.

Because the Finance Board retained the substance of the FHLBB Guidelines and, by implication, the 1983 FHLBB legal analysis, the Interim Guidelines continued to impose upon LOCs all of the regulatory requirements and restrictions that apply to advances. For example, the Interim Guidelines require that LOCs: be fully secured with collateral eligible to secure advances under § 935.9(a) of the Finance Board's regulations, 12 CFR 935.9(a); be counted in the calculation of a member's FHLBank stock-to-advances ratio; be issued only for housing finance purposes if they have a term to maturity in excess of five years, or are issued on behalf of non-qualified thrift lender (non-QTL) members; and be included in the calculation of the limitation on advances to non-QTL members set forth in § 935.13 of the regulations, *id.* § 935.13, if issued on behalf of non-QTL members. In addition, the Interim Guidelines limit LOCs and confirmations used for purposes other than interest rate swap transactions to terms of ten years or less and prohibit use of LOC confirmations solely to promote a member's LOC program or to increase a member's profitability from this fee-based service.

As part of an ongoing effort to determine both how FHLBank standby LOCs might be made more useful to member institutions and nonmember mortgagees and how to encourage greater use of LOCs in carrying out the housing and community investment mission of the FHLBank System, the Finance Board recently undertook a survey of the FHLBanks to determine the uses of standby LOCs and the needs of the FHLBanks in issuing standby

LOCs. The Finance Board also undertook a review of the legal bases on which the FHLBanks' LOC authority has been, and could be, grounded. As a result of these efforts, the Finance Board has concluded that FHLBank authority to engage in standby LOC transactions is not limited to the provisions addressed in the 1983 FHLBB legal opinion, but also may be considered to be part of, and incidental to, the FHLBanks' deposit-taking and payment processing powers set forth in section 11(e) of the Bank Act. 12 U.S.C. 1431(e). If a FHLBank's involvement in a standby LOC transaction is considered to be part of its payment processing activity, however, FHLBank fees for LOCs may be subject to a private sector adjustment factor under section 11(e)(2) of the Bank Act. 12 U.S.C. 1431(e)(2). The Finance Board specifically requests comment regarding the consequences of this possibility.

The Finance Board also has determined that the authority of a FHLBank to issue a standby LOC may be considered, in the alternative, to be part of the FHLBanks' incidental authority to enter into commitments to make advances. On the basis of this refined analysis, the Finance Board has concluded that, although there may be safety and soundness and other policy reasons for requiring certain restrictions, it is unnecessary as a matter of law to subject FHLBank LOCs to all of the statutory and regulatory restrictions and limitations that apply to advances.

This rulemaking proposes to amend the Interim Guidelines to provide the FHLBanks with greater flexibility to respond to member needs for standby LOCs in a manner that ensures that FHLBanks' use of standby LOCs is consistent with the FHLBank System's housing and community investment mission and to codify these policies as a regulation. Accordingly, these proposed standby LOC regulations permit FHLBank members to request standby LOCs for a broader range of purposes and remove many of the restrictions on FHLBank standby LOC issuance that have limited the usefulness of such LOCs in the past.

The Finance Board requests comments on all aspects of the proposed rule.

II. Analysis of the Proposed Rule

This rulemaking proposes to add to the Finance Board's regulations, 12 CFR chapter IX, a new part 938 to govern FHLBank Standby LOCs. Definitions relevant to the proposed FHLBank Standby LOC regulation are set forth in § 938.1 of the proposed regulation. Because these definitions have been drafted in order to implement substantive provisions, they are discussed, as necessary, below in the context of their use in the body of the regulation.

Section 938.2 of the proposed regulation governs FHLBank standby LOCs issued or confirmed on behalf of member institutions. Paragraph (a) authorizes FHLBanks to issue standby LOCs on behalf of members, and to confirm standby LOCs issued by members, that conform to the requirements of proposed part 938 and that are issued for the purposes enumerated in paragraphs (a)(1) through (a)(4). The term ''standby letter of credit,'' as defined in § 938.1, is intended to include those instruments that are commonly referred to as such; *i.e.*, LOCs that effectively guarantee the applicant's payment or performance in an underlying transaction with the beneficiary. The term does not include LOCs that are intended to serve as a short-term payment mechanism to finance the movement of goods (commonly known as ''commercial'' LOCs). The Finance Board considers ''direct pay'' LOCs, which are designed to act as the primary mechanism for satisfying an applicant's payment obligations over a period of time (for example, to make payments of principal and interest on commercial paper and medium-term notes) to be a form of standby LOC which FHLBanks would be authorized to issue under the proposed regulation.

Under paragraph (a) of proposed § 938.2, FHLBanks would be authorized to issue or confirm standby LOCs for any of four broad purposes: (1) To facilitate residential housing finance or other housing activity; (2) to facilitate the financing of targeted economic development projects; (3) to assist members with asset/liability management; or (4) to provide members with liquidity or other funding. This list of approved purposes would replace the more specific and restrictive list set forth in the Interim Guidelines. By replacing the specific list with the broader purposes set forth in paragraph (a) of § 938.2, the Finance Board intends to ensure that FHLBanks' use of standby LOCs is consistent with the FHLBank System's housing and community development mission and, at the same time, provide the FHLBanks with greater flexibility to respond to member needs for such credit. Under the proposed regulation, FHLBanks would determine, subject to Finance Board review and oversight, whether particular transactions fall within any of the above-described categories.

The term ''residential housing finance'' refers to the purchase or funding of ''residential housing finance assets,'' or other activities that support the development or construction of residential housing. As defined in § 935.1 of the Finance Board's regulations, the term ''residential housing finance assets'' includes: Loans secured by residential real property; mortgage-backed securities; participations in loans secured by residential real property; loans financed by CIP advances (under the proposed Community Investment Cash Advance (CICA) rule, discussed below, reference to CIP advances would be amended to refer to loans or investments financed by advances made pursuant to a CICA program); loans secured by manufactured housing; or any other assets that the Finance Board determines to be residential housing finance assets. The term ''residential housing finance,'' as defined in § 938.1 of the proposed regulation, also is intended to encompass activities that are aimed toward providing residential housing for individuals and families, but that do not fall within the existing regulatory definition of ''residential housing finance assets,'' which refers only to loans and securities backed by loans. For example, a FHLBank would be permitted to issue a standby LOC to serve as a performance bond to secure a builder's performance in a housing construction project. Paragraph (a)(1) of § 938.2 is intended to provide the FHLBanks with the same scope of authority to issue and confirm housing-related standby LOCs that currently exists under the Interim Policy.

Economic development projects that would be eligible for support through a FHLBank standby LOC would include commercial, manufacturing, social service, public or community facility, and public or private infrastructure projects or activities that benefit families with incomes of 100 percent or less of area median income in urban areas, 115 percent or less of area median income in rural areas, or with an income at or below a target level established by a FHLBank to address unmet housing or economic development credit needs. Projects would be deemed to benefit such families if: The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level; the project is located in a rural or urban Champion Community, a rural or urban Empowerment Zone, or rural or urban Enterprise Community; the project is located in a federally declared disaster area; the project involves property

eligible for a federal Brownfield Tax Credit; the project is located in an area affected by a federal military base closing or realignment; the project is located in an area identified as a designated community under the Community Adjustment and Investment Program; the annual salaries for at least 75 percent of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; the project qualifies as a small business; or more than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level.

These provisions and the concepts underlying them were developed as part of the Finance Board's proposed Community Investment Cash Advance (CICA) program regulation, which has been published elsewhere in this issue of the **Federal Register**. The proposed CICA Regulation would establish a general framework under which the FHLBanks may establish programs to provide advances to be used in support of financing for housing and economic development activities that benefit income-targeted families that may not benefit from advances made under the FHLBanks' existing Affordable Housing Programs (AHP) and Community Investment Programs (CIP).

Specifically, the proposed CICA Regulation would authorize each FHLBank to establish: A Rural Development Advance (RDA) program to provide advances to members and nonmember borrowers to finance economic development projects in rural areas that benefit families with incomes at or below 115 percent of the area median income; an Urban Development Advance (UDA) program to provide advances to members and nonmember borrowers to finance economic development projects in urban areas that benefit families with incomes at or below 100 percent of the area median income; and other CICA programs to provide financing for economic development projects benefiting families with incomes at or below a level established by the Bank to address unmet economic development credit needs (defined as those for which financing is not generally available, or is available at lower levels or under less attractive terms). Regulation of the existing CIP would also be subsumed within the CICA Regulation.

Under the Interim Guidelines, FHLBanks are permitted to issue standby LOCs to support only those economic development activities that benefit families earning less than 80 percent of area median income, or that are located in a neighborhood in which 51 percent or more of the households earn less than 80 percent of area median income, for which a member could receive a CIP advance. Having determined that it may authorize FHLBanks to issue standby LOCs to support a wider array of activities than is currently permitted under the Interim Guidelines, the Finance Board sought ways to permit FHLBanks to respond better to member requests for LOC products while, at the same time, assuring that FHLBanks' use of standby LOCs is consistent with the public policy purposes of the FHLBank System. The inclusion of the CICA-related targeted economic development provisions, which already had been subject to much study and discussion in the process of developing the proposed CICA Regulation, as one parameter for FHLBank LOC use appears to meet both criteria by maximizing the ability of FHLBanks to benefit areas with unmet economic development credit needs, as well as furthering regulatory consistency.

A thorough discussion of the reasoning behind the Finance Board's inclusion of particular substantive criteria in its conception of targeted economic development may be found in the preamble to the proposed CICA Regulation, published elsewhere in this issue of the **Federal Register**. It is anticipated that, if and when the CICA and Standby LOC Regulations are promulgated as final rules, the Standby LOC Regulation will describe the economic activities that may be appropriately supported by FHLBank LOCs merely by cross-referencing the CICA Regulation, as opposed to including all of the CICA-related definitions therein. Because the CICA Regulation thus far has been published only as a proposed rule, the Finance Board found it appropriate to restate those definitions in their entirety within the proposed Standby LOC Regulation in order to make its scope more readily apparent to the reader.

Under paragraph (a) of proposed § 938.2, FHLBanks also would be permitted to issue standby LOCs to assist members with their asset/liability management and to provide members with liquidity or other funding. Although the Interim Guidelines permit FHLBanks to issue short-term LOCs to facilitate interest rate swaps and other transactions that assist in asset/liability management, such LOCs would no longer be limited to a term of five years or less, or limited only to QTL members, under the proposed regulation. In addition, although liquidity and other funding purposes are not mentioned expressly in the Interim Guidelines, they have been included in the proposed regulation to make clear that the FHLBanks may use their LOC authority to further this central member-service function and to bring within the purview of the regulation permissible standby LOC activities that might not be easily traceable to a particular housing or economic development purpose, such as securing public unit deposits and IRC Section 936 deposits.

Paragraph (b) of proposed § 938.2 requires that FHLBank standby LOCs made to members be secured at the time of issuance for the full amount of the LOC by collateral described in paragraph (c) of that section. This would continue the requirement of the Interim Guidelines that LOCs be fully secured at the time of issuance, although, as discussed below, members would be able to use a wider range of collateral and would no longer need to pledge their FHLBank stock as additional collateral for LOCs. Although the Finance Board has concluded that, as a matter of law, the Bank Act does not necessarily require that LOCs be collateralized fully at the time of issuance, it has determined that such a requirement is advisable as a matter of safe and sound banking practice. The Finance Board requests comments on whether there are any circumstances under which the FHLBanks could safely and soundly issue LOCs that are not fully collateralized.

Paragraph (c) describes the types of collateral that are eligible to secure FHLBank standby LOCs issued on behalf of members. It provides that all LOCs may be secured with collateral that is eligible to secure FHLBank advances to members under § 935.9(a) of the Finance Board's regulations. 12 CFR 935.9(a). In addition, in order to facilitate the use of LOCs to support housing and targeted economic development activities and to permit greater access to LOCs by members that lack sufficient § 935.9(a)—eligible collateral, the proposed regulation also would permit members to secure LOCs that are issued for the purpose of facilitating residential housing finance or targeted economic development activities with: (1) secured or federally-guaranteed loans to small businesses (as defined by the Office of Thrift Supervision); (2) investment-grade obligations of state or local government agencies; and (3) ''other real estate-related collateral'' described in § 935.9(a)(4) of the regulations in excess

of the ''30 percent of capital'' limitation set forth in paragraph (a)(4)(iii) thereof.

Under the Interim Guidelines, LOCs may be secured only by collateral that is eligible to secure advances, regardless of the purpose for which the LOC is issued. Such collateral includes Small Business Administration—(SBA) guaranteed securities. However because most small business loans are not SBA-guaranteed, the proposed regulation, by permitting all secured or federally-guaranteed small business loans to be used as collateral for LOCs, could encourage members to provide financing for smaller or start-up businesses that often have a more difficult time accessing credit than well-established or larger enterprises. Expanded use of small business loans as collateral will support the FHLBanks' mission of providing support for targeted economic development lending—the targeted universe in this case being small commercial and business entities, including small farms. Commercial bank members and Community Development Financial Institution (CDFI) members, in particular, may have substantial amounts of such loans available to use as collateral.

Under the proposed regulation, an additional source of collateral for LOCs would be state and municipal bonds rated investment grade by a nationally-recognized rating agency (such as bonds rated BBB or better by Moody's or Bbb or better by Standard & Poor's). Under the Interim Guidelines, FHLBanks may accept real estate-related state and municipal housing bonds as collateral for LOCs only as part of the limited basket of other real estate-related collateral. *See* 12 CFR 935.9(a)(4)(iii). Expanding eligible collateral for LOCs to include investment grade state or municipal bonds could benefit members who hold such investments and who have insufficient advances-eligible collateral. Because there is an established secondary market for these bonds, they can be easily valued and, if necessary, liquidated by a FHLBank.

The proposed regulation also permits members to secure LOCs issued for housing finance or targeted economic development purposes with other real estate-related collateral in excess of the ''30 percent of capital'' limitation set forth in § 935.9(a)(4)(iii) of the Advances Regulation. 12 CFR 935.9(a)(4)(iii). If so permitted, members that have substantial amounts of such collateral, such as commercial banks, could expand their use of FHLBank LOCs. For example, members specializing in community development lending could pledge, without limit, loans secured by community facilities, such as day care centers and health clinics and lenders in rural areas could pledge more of their farm loans.

The proposed regulation would permit each FHLBank to establish limits on the use of these additional types of collateral. FHLBanks accepting such collateral would be expected to include, as part of their standby LOC policies required under § 938.5(a)(1), policies and procedures for valuing and securing such collateral that are consistent with safe and sound banking practice. The Finance Board believes that any additional risks that might arise from the use of these additional types of collateral should be adequately managed in accordance with the collateral provisions of the Advances Regulation that are referenced in proposed § 938.5(d). Among other things, the Advances Regulation requires the FHLBanks to establish written procedures for determining the value of collateral, and to follow those procedures in ascertaining the value of a particular asset offered as collateral. *See* 12 CFR 935.12. The Advances Regulation also permits the FHLBanks to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the FHLBank deems necessary. *Id.*

The Finance Board expects that if proposed part 938 is adopted as a final rule, each FHLBank will review its collateral valuation procedures, and will amend them as necessary to reflect the availability of these additional types of collateral to secure standby LOCs, before accepting such collateral. The Finance Board also expects that the FHLBanks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral. Such appraisal should take into account the security of the loan itself, as well as any additional risks inherent in such collateral and each FHLBank's own ability to evaluate those risks. The Finance Board specifically requests comment on whether there are other assets that should be considered as eligible collateral for LOCs and whether the Finance Board should establish limits on these additional types of collateral based upon the assets that secure the loans themselves.

Section 938.3 of the proposed regulation governs FHLBank standby LOCs issued or confirmed on behalf of customers that have been certified as eligible nonmember mortgagees pursuant to § 935.22(b) of the Finance Board's regulations. 12 CFR 935.22(b). Paragraph (a) of proposed § 938.3 would authorize FHLBanks to issue or confirm on behalf of nonmember mortgagees standby LOCs that are fully secured by Federal Housing Administration-(FHA) insured loans or Government National Mortgage Association (GNMA) securities backed by FHA-insured loans, for the same broad purposes for which FHLBanks may issue or confirm LOCs on behalf of member institutions. In addition, paragraph (b) of proposed § 938.3 would authorize FHLBanks to issue or confirm, on behalf of nonmember mortgagees that have qualified as state housing finance agencies (SHFAs) by meeting the requirements of § 935.22(d) of the regulations, 12 CFR 935.22(d), standby LOCs that are fully secured by collateral eligible under § 935.9(a) of the regulations, *id.* 935.9(a), to secure advances. Standby LOCs secured by such collateral would be required to facilitate residential or commercial lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the IRC.

Proposed § 938.3 would continue the general policy of the Interim Guidelines by requiring that FHLBank LOCs issued on behalf of nonmember mortgagees be subject to the same limitations and restrictions that apply to advances made to nonmembers under section 10b of the Bank Act, 12 U.S.C. 1430b, and § 935.24 of the regulations, 12 CFR 935.24. In its legal review of the sources of statutory authority for issuance of LOCs by FHLBanks, the Finance Board determined that, unlike LOCs issued on behalf of members, the issuance of LOCs on behalf of nonmembers could not be considered to fall within the FHLBanks' payment processing authority, which expressly applies only to FHLBank dealings with members and financial institutions eligible to apply for FHLBank membership. *See* 12 U.S.C. 1431(e)(2). Thus, the Finance Board believes that FHLBanks should issue LOCs to a nonmember mortgagee only under the same conditions that would apply if the FHLBank were to enter into an advance commitment with that nonmember. Because the type of collateral that a FHLBank may accept to secure advances to nonmembers is linked, by statute, to the purpose of the advance, the purpose for which a LOC is issued on behalf of a nonmember also must govern the type of collateral that the FHLBank may accept to secure the LOC.

Section 938.4 of the proposed regulation governs the obligation of both members and nonmember mortgagees on whose behalf an FHLBank issues a LOC to reimburse the FHLBank for any funds drawn by the beneficiary under

the LOC. Paragraph (a) of proposed § 938.4 requires that, as part of the agreement pursuant to which a LOC is to be issued, a member or nonmember assume an unconditional obligation to reimburse the FHLBank fully for any amounts drawn by the beneficiary under the LOC by having available in its FHLBank deposit or transaction account on the day of the FHLBank's payment to the beneficiary sufficient funds to cover such payment. The requirement that an applicant assume an unconditional obligation to reimburse the FHLBank continues the policy of the Interim Guidelines and is consistent with the provisions of Article 5 of the Uniform Commercial Code (UCC), as revised in 1995, which provide that an issuer that has honored a presentation made by a beneficiary under a LOC is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds. *See* UCC 5–108(i) (1995).

In order to facilitate reimbursement of a FHLBank, to emphasize the applicant's responsibility to cover the amount of any draw under a LOC, to tie the FHLBanks' LOC activities more closely to their payment processing authority (in the case of LOCs issued on behalf of members) and for purposes of regulatory consistency, paragraph (a)(1) of § 938.4 requires that reimbursement by an applicant be accomplished through its FHLBank deposit account (if the applicant is a member) or transaction account (if the applicant is a nonmember, *see* 12 CFR 935.24).

Paragraph (b) of proposed § 938.4 requires FHLBanks to take prompt action to recover the funds due if an applicant fails to have available in its FHLBank deposit or transaction account on the day of a draw under a LOC sufficient funds to cover the draw. Despite this requirement, paragraph (b) of proposed § 938.4 authorizes an issuing FHLBank, at the request of a member or nonmember, but in its own discretion, to finance an applicant's repayment of a LOC draw by making an advance to the applicant. Of course, such an advance could be made only if the applicant is, at that time, willing and able to comply with the advances requirements of section 10 (if the applicant is a member) or section 10b (if the applicant is a nonmember) of the Bank Act, 12 U.S.C. 1430, 1430b, and part 935 of the Finance Board's regulations, 12 CFR part 935. For purposes of complying with the regulatory advance requirements, the ''purpose'' of an advance made to a member or nonmember under the conditions of proposed § 938.4(c) would be determined using the same standards that apply to any other type of advance. See 12 CFR 935.13 & .14.

Section 938.5 of the proposed regulation sets forth certain miscellaneous provisions that would apply to all LOCs issued on behalf of members and nonmembers. paragraph (a)(1) of proposed § 938.5 requires that all LOCs issued on behalf of members or nonmembers be issued only pursuant to a written LOC policy established by the FHLBank to govern its standby LOC programs. Such a policy would be required to: (1) implement all statutory and regulatory provisions that apply to standby FHLBank LOCs; (2) to set forth underlying criteria to apply to the issuance or renewal of standby LOCs that is consistent with the criteria that must be applied to the underwriting of advances; and (3) set forth criteria regarding the pricing of standby LOCs, including any special criteria that could apply to LOCs issued to facilitate the financing of targeted economic development projects.

It is intended that paragraph (a)(1)(ii) of proposed § 938.5, regarding the application of underwriting criteria under the FHLBank's LOC policy at the time of the issuance or renewal of a LOC, apply also in cases where a LOC contains a provision stating that the LOC will automatically renew unless the FHLBank notifies the beneficiary of its intent not to renew the LOC. Such provisions must be carefully monitored so that the FHLBank can control its risk exposure. The renewal of any LOC pursuant to such a provision should be approved in the same manner as a renewal of a LOC that does not contain this provision. However, because an issued LOC cannot be canceled without agreement from the beneficiary, FHLBanks are encouraged to issue LOCs only for a limited term, with the potential for renewal if the account party remains creditworthy. This would give the FHLBanks an opportunity to reassess periodically their exposure on long-term transactions.

As a matter of safety and soundness regulation, paragraph (a)(2) of proposed § 938.5 would continue the policy of the Interim Guidelines by requiring that all LOCs issued by a FHLBank either contain a specific expiration date, or be for a specified term. This is consistent with Comptroller of the Currency and the OTS regulations on LOCs, which specifically require that LOCs issued by national banks and savings associations, as a matter of sound banking practice, be limited in duration or terminable periodically or at will upon notice or payment to the beneficiary. *See* 12 CFR 7.1016(b)(1)(iii) and 560.120(b)(1)(iii).

Similarly, paragraph (a)(3) of proposed § 938.5 would continue the policy of the Interim Guidelines by requiring that the transfer of a FHLBank LOC be approved in advance by the issuing FHLBank. A transfer of a letter of credit occurs when the beneficiary transfers to a another party its right to draw under the LOC. Requiring approval by a FHLBank would ensure that a LOC could not be transferred without the FHLBank's knowledge.

Finally, paragraph (b) of proposed § 938.5 would apply to FHLBank LOCs issued on behalf of members and nonmembers certain provisions set forth in the Finance Board's Advances Regulation, 12 CFR part 935, including provisions regarding the FHLBank's right to require additional collateral or to limit the type of collateral that it will accept, and matters of collateral verification, safekeeping and valuation.

Proposed part 938 would not include many of the restrictions on FHLBank standby LOC transactions that currently are imposed by the Interim Guidelines. The Interim Guidelines require a member to purchase FHLBank stock when a FHLBank issues a LOC, which is an off-balance sheet item, on behalf of that member. This causes a decrease in the FHLBank's leverage because the FHLBank's outstanding stock is increased without a corresponding increase in on-balance sheet assets. Under proposed part 938, FHLBanks would no longer be required to include LOCs in the computation of a member's advances/FHLBank capital stock ratio, because the Finance Board no longer considers LOCs to be the legal equivalent of outstanding advances. Eliminating this requirement would remove the deleveraging effect of the current policy and would make FHLBank standby LOCs more attractive to members.

By applying uniform requirements to standby LOCs issued on behalf of any member, without regard to the QTL status of the member, proposed part 938 would not require that standby LOCs issued on behalf of non-QTL members be issued only for housing finance purposes, as is the case under the Interim Guidelines. In addition, proposed part 938 would not require that standby LOCs issued on behalf of non-QTL members be included with total FHLBank System advances and advances to non-QTL members for purposes of monitoring compliance with the FHLBank System's statutory 30 percent limit on advances to non-QTL members. *See* 12 U.S.C. 1430(e)(2). Again, the Finance Board has determined that these restrictions are not required by law because the Finance

Board no longer considers LOCs to be the legal equivalent of outstanding advances.

Removing these restrictions on standby LOCs issued on behalf of non-QTL members, many of which are actively involved in financing housing and economic development transactions, would expand the opportunities for FHLBanks to issue standby LOCs to support such housing and economic development activities. In addition, removal of these restrictions would enhance the ability of FHLBanks to assist non-QTL members with their liquidity needs.

The Interim Guidelines limit the use of standby LOCs with tax-exempt bonds to those issues designed to promote housing or commercial and economic development that benefits low-and moderate-income families or that is located in low-and moderate-income neighborhoods. Under IRC section 149, 26 U.S.C. 149, it is unclear whether tax-exempt bonds financing economic development would lose their tax-exempt status if supported by a FHLBank standby LOC. The Finance Board currently is working with Congress to resolve this issue legislatively. In the meantime, the Finance Board considers this issue to be a matter for the Internal Revenue Service to determine and, therefore, has not specified in the proposed regulation the types of tax-exempt bonds for which a FHLBank standby LOC may be issued.

The Interim Guidelines provide that FHLBank LOC confirmations may not be used solely to support a member's own LOC program or to increase a member's profitability. LOC confirmations serve essentially the same purpose, and incur for a FHLBank the same contingent liability, as the issuance of a LOC. A member's access to a FHLBank's LOC confirmation presumably would make a member's LOC more acceptable to a beneficiary and would help to increase a member's profitability. Because all of the products and services offered by a FHLBank to its members are designed to assist members improve their liquidity, to offer additional financing options to its customers, and consequently increase its income, the current restriction on confirmations appears to conflict with these goals. Therefore, this restriction has not been included in proposed part 938.

The Interim Guidelines limit the term of a FHLBank standby LOC issued on behalf of a QTL member to 5 years for non-housing finance purposes and 10 years for housing finance purposes, but impose no limit for issues that support a member's performance in interest rate swap transactions. The Interim Guidelines limit the term of a FHLBank standby LOC issued on behalf of a non-QTL member to 10 years or less for housing finance. In contrast, FHLBanks may offer advances with maturities of any length consistent with the safe and sound operation of the FHLBank. *See* 12 CFR 935.6(a).

Expanding the terms for LOCs would benefit low-income housing tax credit transactions that often require a 15-year letter of credit. In addition, a longer term would permit LOCs to be used with industrial development and other bonds used to fund local economic development that typically have terms longer than 10 years. Because standby LOCs posses no more credit risk than an advance, there appears to be no reason to limit the maturity of a LOC as long as a FHLBank has established controls that ensure the safe and sound operation of the FHLBank. Therefore, the proposed regulation imposes no term limitations on FHLBank standby LOCs.

Proposed part 938 would not require that outstanding FHLBank LOCs be reflected on the books of the FHLBank as contingent liabilities, as is required under the Interim Guidelines, because this is already required under General Accepted Accounting Principles (GAAP), which the FHLBanks must follow. Finally, the requirement of the Interim Guidelines that FHLBanks must submit monthly LOC reports has not been included in the proposed regulation because this is already subsumed within the current general requirement that FHLBanks report monthly to the Finance Board on all FHLBank activities. *See* 12 CFR 934.7(e).

III. Regulatory Flexibility Act

The proposed rule applies only to the FHLBanks, which do not come within the meaning of ''small business,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 938

Community development, Credit, Federal home loan banks, Housing, Mortgages.

Accordingly, the Finance Board hereby proposes to amend chapter IX, title 12, Code of Federal Regulations, to add a new part 938 to read as follows:

PART 938—STANDBY LETTERS OF CREDIT

Sec.

938.1 Definitions.
938.2 Standby letters of credit on behalf of members.
938.3 Standby letters of credit on behalf of nonmember mortgagees.
938.4 Obligation to Bank under all standby letters of credit.
938.5 Additional provisions applying to all standby letters of credit.

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

§ 938.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421–49).

Applicant means a person or entity at whose request or for whose account a standby letter of credit is issued.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Beneficiary means a person or entity who, under the terms of a standby letter of credit, is entitled to have its complying presentation honored.

Benefit. An economic development project is deemed to *benefit* families with incomes at or below a targeted income level if:

(1) The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level;

(2) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of Agriculture (in the case of projects located in rural areas);

(3) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD (in the case of projects located in urban areas);

(4) The project is located in a federally declared disaster area;

(5) The project involves property eligible for a federal Brownfield Tax Credit authorized by 26 U.S.C. 198;

(6) The project is located in an area impacted by a federal military base closing or realignment;

(7) The project is located in an area identified as a designated community under the Community Adjustment and Investment Program;

(8) The annual salaries for at least 75 percent of the permanent full-and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level;

(9) The project qualifies as a small business; or

(10) More than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of Housing and Urban Development or the Secretary of Agriculture as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

Confirm means to undertake, at the request or with the consent of the issuer, to honor a presentation under a standby letter of credit issued by a member or nonmember mortgagee.

Document means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is presented under the terms of a standby letter of credit.

Economic development projects means:

(1) Commercial, manufacturing, social service, and public facility projects and activities; and

(2) The construction or rehabilitation of public or private infrastructure, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Finance Board means the agency established by the Act as the Federal Housing Finance Board.

Issuer means a person or entity that issues a standby letter of credit.

Median income for the area means one or more of the following, as determined by the Bank:

(1) The median income for the area, as published annually by the Department of Housing and Urban Development;

(2) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(3) The median income for the area, as published by the United States Department of Agriculture; or

(4) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors of the Finance Board, at the request of a Bank, for use under the Bank's Community Investment Cash Advance (CICA) programs, as provided for in part 970 of this chapter.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with § § 933.20 and 933.24 of this chapter.

Metropolitan statistical area means a ''metropolitan statistical area,'' as that term is defined by the U.S. Bureau of the Census.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of general local government with a population of 25,000 or less;

(3) A rural county;

(4) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village; or

(5) A geographic location designated in comprehensive plans, ordinance, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember mortgagee means an entity certified as a nonmember mortgagee pursuant to § 935.22(b) of this chapter.

Nonmember SHFA means a nonmember mortgagee that is a ''state housing finance agency,'' as that term is defined in § 935.1 of this chapter, and that has met the requirements of § 935.22(d) of this chapter.

Presentation means delivery of a document to an issuer, or an entity that has undertaken a confirmation at the request or with the consent of the issuer, for the giving of value under a standby letter of credit.

Residential housing finance means:

(1) The purchase or funding of ''residential housing finance assets,'' as that term is defined in § 935.1 of this chapter; or

(2) Other activities that support the development or construction of residential housing.

Rural area means:

(1) A unit of general local government or an unincorporated place outside a metropolitan statistical area that has a population of less than 30,000; or

(2) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village.

Small business means a ''small business concern,'' as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration at 13 CFR part 121, or any successor provisions.

Standby letter of credit means a definite undertaking by an issuer on behalf of an applicant that represents an obligation to the beneficiary, pursuant to a complying presentation, to repay money borrowed by, advanced to, or for the account of the applicant; to make payment on account of any indebtedness undertaken by the applicant; or to make payment on account of any default by the applicant in the performance of an obligation. The term *standby letter of credit* does not include a commercial letter of credit, or any short-term self-liquidating instrument used to finance the movement of goods.

Targeted income level means:

(1) For projects or activities that benefit primarily individuals or families residing in an urban area, 100 percent of the median income for the area;

(2) For projects or activities that benefit primarily individuals or families residing in a rural area, 115 percent of the median income for the area; or

(3) An income level that is based on a percentage of median income established by the Bank to address unmet community investment credit needs.

Urban area means a unit of general local government or an unincorporated place that is:

(1) Within a metropolitan statistical area; or

(2) Outside a metropolitan statistical area and has a population of more than 30,000.

§ 938.2 Standby letters of credit on behalf of members.

(a) *Authority and purposes.* Each Bank is authorized to issue or confirm on behalf of members standby letters of credit that comply with the requirements of this part, for any of the following purposes:

(1) To assist members in facilitating residential housing finance;

(2) To assist members in facilitating the financing of economic development projects that benefit families with incomes at or below a targeted income level;

(3) To assist members with asset/liability management; or

(4) To provide members with liquidity or other funding.

(b) *Fully secured.* A Bank, at the time it issues or confirms a standby letter of credit on behalf of a member, shall obtain and maintain a security interest in collateral that is sufficient to secure fully the member's unconditional obligation described § 938.4(a)(2), and that complies with the requirements set forth in paragraph (c) of this section.

(c) *Eligible collateral.* (1) Any standby letter of credit issued on behalf of a member may be secured by collateral that is eligible to secure advances under § 935.9(a) of this chapter. In making the calculation required under § 935.9(a)(4)(iii) of this chapter, only standby letters of credit issued for the

purposes described in paragraphs (a)(3) or (a)(4) of this section shall be counted as ''outstanding advances.''

(2) A standby letter of credit issued on behalf of a member for a purpose described in paragraphs (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by:

(i) Secured or federally-guaranteed loans to small businesses or securities representing interests in such loans; or

(ii) Obligations of state or local government units or agencies, rated as investment grade by a nationally-recognized rating agency.

§ 938.3 Standby letters of credit on behalf of nonmember mortgagees.

(a) *Nonmember mortgagees.* Each Bank is authorized to issue or confirm on behalf of nonmember mortgagees standby letters of credit that are fully secured by collateral described in §§ 935.24(b)(1)(i) or (ii) of this chapter, and that otherwise comply with the requirements of this part, for any of the following purposes:

(1) to assist nonmember mortgagees in facilitating residential housing finance;

(2) To assist nonmember mortgagees in facilitating the financing of economic development projects that benefit families with incomes at or below a targeted income level;

(3) To assist nonmember mortgagees with asset/liability management; or

(4) To provide nonmember mortgagees with liquidity or other funding.

(b) *Nonmember SHFAs.* Each Bank is authorized to issue or confirm on behalf of nonmember SHFAs standby letters of credit that are fully secured by collateral described in §§ 935.24(b)(2)(i)(A), (B) or (C) of this chapter, and that otherwise comply with the requirements of this part, for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)).

§ 938.4 Obligation to Bank under all standby letters of credit.

(a) *Obligation to reimburse.* A Bank may issue or confirm a standby letter of credit only on behalf of a member or nonmember mortgagee that has:

(1) Established with the Bank a cash account pursuant to §§ 934.5, 935.24(b)(2)(i)(B) or 935.24(d) of this chapter; and

(2) Assumed an unconditional obligation to reimburse the Bank for value given by the Bank to the beneficiary under the terms of the standby letter of credit by depositing immediately available funds into the account described in paragraph (a)(1) of this section not later than the date of the Bank's payment of funds to the beneficiary.

(b) *Prompt action to recover funds.* If a member or nonmember mortgagee fails to fulfill the obligation described in paragraph (a)(2) of this section, the Bank shall take action promptly to recover the funds that such member or nonmember mortgagee is obligated to repay.

(c) *Obligation financed by advance.* Notwithstanding the obligations and duties of the Bank and its member or nonmember mortgagee under paragraphs (a) and (b) of this section, the Bank may, at its discretion, permit such member or nonmember mortgagee to finance repayment of the obligation described in paragraph (a)(2) of this section by receiving an advance that complies with sections 10 or 10b of the Act and part 935 of this chapter.

§ 938.5 Additional provisions applying to all standby letters of credit.

(a) *Written policy; other requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Be issued or confirmed only in compliance with a written policy, developed and implemented by the Bank to govern its standby letter of credit programs, that:

(i) Is consistent with the provisions of the Act and this part;

(ii) Sets forth credit underwriting criteria, consistent with the provisions of § 935.5 of this chapter, to be applied in evaluating applications for standby letters of credit and renewals thereof; and

(iii) Sets forth criteria regarding the pricing of standby letters of credit, including any special pricing provisions for letters of credit that facilitate the financing of economic development projects that benefit families with incomes at or below a targeted income level;

(2) Contain a specific expiration date, or be for a specific term; and

(3) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

(b) *Additional collateral provisions.* (1) A Bank may take such steps as it deems necessary to protect its secured position on standby letters of credit, including requiring additional collateral, whether or not such additional collateral conforms to the requirements of §§ 938.2 or 938.3.

(2) Collateral pledged by a member or nonmember mortgagee to secure a letter of credit issued or confirmed on its behalf by a Bank shall be subject to the provisions of §§ 935.9(b), 935.9(e), 935.11 and 935.12 of this chapter.

Dated: April 22, 1998.

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

Bruce A. Morrison,

Chairman.

[FR Doc. 98–11948 Filed 5–7–98; 8:45 am]

BILLING CODE 6725–01–P

federal register

Friday
May 8, 1998

Part V

National Security Council

32 CFR Part 2101

Freedom of Information Act Requests for Classified Documents—Processing, Fees, Reports, Applicable Material, Declassification Criteria, Partial Release; Final Rule

Procedures for Obtaining Access to National Security Council (NSC) Records; Notice

NATIONAL SECURITY COUNCIL

32 CFR Part 2101

Freedom of Information Act Requests for Classified Documents—Processing, Fees, Reports, Applicable Material, Declassification Criteria, Partial Release

AGENCY: National Security Council.

ACTION: Removal of final rule.

SUMMARY: This action removes the National Security Council regulations for processing FOIA requests for classified documents. The National Security Council is an entity within the Executive Office of the President that exists solely to advise and assist the President in the discharge of his constitutionally based responsibilities over the national security affairs of the United States, and thus NSC records are not subject to disclosure under the Freedom of Information Act. This action is consistent with the holding of the U.S. Court of Appeals for the District of Columbia in *Armstrong, et al.* v. *Executive Office of the President, et al.,* 90 F.3d 553 (1996), *cert. denied,* 117 S. Ct. 1842 (1997). Requesters may continue to seek access to NSC documents by writing to the National Security Council, Access Management Staff, Washington, DC 20504.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rod Soubers, 202–456–9201.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 2101

Freedom of information.

PART 2101—[REMOVED]

Accordingly, by the authority of 44 U.S.C. 2201 and 50 U.S.C. 402, 32 CFR part 2101 is removed.

Glyn T. Davies,

Executive Secretary.

[FR Doc. 98–12344 Filed 5–7–98; 8:45 am]

BILLING CODE 3150–01–P

NATIONAL SECURITY COUNCIL

Procedures for Obtaining Access to National Security Council (NSC) Records

AGENCY: National Security Council.

ACTION: Notice of NSC Issuance of Access Procedures.

SUMMARY: The NSC is today publishing a Removal of Final Rule in the **Federal Register** that removes the NSC regulations for processing Freedom of Information Act (FOIA) requests for NSC records. Although NSC records are no longer subject to disclosure under the FOIA, a Presidential Memorandum of March 24, 1994, directed the NSC to establish procedures for continued public access to appropriate NSC records.

DATES: These procedures take effect on May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rod Soubers, 202–456–9201.

Public Access to National Security Council Records

Introduction

Sec. 1.1 Background

As an organization in the Executive Office of the President that advises and assists the President, the National Security Council (NSC) is not subject to the Freedom of Information Act (FOIA). However, the NSC accepts and processes requests from the public and releases information as appropriate on a discretionary basis.

Sec. 1.2 Purpose

These procedures set forth an orderly process for public access to important national security information, consistent with protecting national security, ensuring the rights of individuals, and promoting open and effective government.

Requests From the Public for Records

Sec. 2.1 Access Policy

a. The NSC will review for release: (1) certain records of the current administration: namely, those internal records created by and transmitted exclusively among NSC staff members as well as all communications sent or received from outside the Executive Office of the President; and (2) records remaining in NSC custody from past Presidential administrations.

b. Because of the NSC's statutory role in advising and assisting the President with respect to national security issues, many of the records maintained by the NSC are extremely sensitive; most are classified under Executive Order 12958 or predecessor orders. Consequently, a main emphasis of the NSC staff in reviewing records for release to the public is assuring that sensitive national security information remains protected as records are released. In releasing documents, the NSC will follow generally accepted access principles, such as those articulated in FOIA case law.

c. Records of the current administration are not subject to the mandatory review provisions of Executive Order 12958. However, all requests for classified records not otherwise restricted will be processed in a manner consistent with the mandatory review provisions of Executive Order 12958, or its successor.

d. A record, or portion thereof, may be exempted from release only if it contains information within one or more of the following categories:

1. Information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order.

2. Information relating to appointments to Federal office or entirely to the internal practices of the NSC, including formats maintained in confidence to authenticate internal issuances.

3. Information that is specifically exempted from disclosure by statute.

4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

5. Communications requesting or submitting advice, or any other privileged communications, between presidential advisers, including NSC staff, or between NSC staff and other government officials.

6. Personnel files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

7. Information compiled for law enforcement purposes.

Sec. 2.2 Submitting Requests for Records

All requests from the public for records should be addressed to: Director, Access Management, National Security Council, Washington, D.C. 20504. Requests for records must be sufficiently specific to enable the NSC staff to locate the record with a reasonable amount of effort. When a request does not reasonably and specifically describe the record sought, the NSC staff will notify the requester that no further action will be taken until additional information is provided, or the scope of the request is narrowed.

Sec. 2.3 Processing Requests for Records

a. The NSC staff will process and answer all requests, including conducting searches for responsive records, providing copies of all releasable records, providing a negative reply if no responsive records are located, and providing a reason for withholding of any record or portion thereof.

b. Public requests to the NSC are generally handled on a ''first-in/first-out'' basis. The Access Management Staff will maintain a queue of requests and will service each request in turn. In the interest of economy and efficiency the staff may establish separate queues for requests of different degrees of difficulty.

c. There are three routine procedural exceptions to this ''first-in/first-out'' policy: (1) when it is readily apparent that requested documents have been previously declassified and released, the request is answered without regard to its position in the queue; (2) when a new document request is identical to or involves part of a previous but still pending document request (i.e., no additional research is required), the new request is processed along with the pending request; and (3) when the processing of a particular request requires coordination with agencies of subject matter interest, a response cannot be provided to a requester until the coordination is complete.

d. Exceptions to the ''first-in/first-out'' policy may also be made in order to hasten response to (1) requests that may affect the personal safety of an individual or (2) requests that are of broad and pressing public interest.

e. In order to assure equitable access to records by all members of the requesting public, initial production of documents in response to any single request, at the discretion of the Access Management staff, may be limited to what can reasonably be retrieved without burdensome effort. After the initial production of documents the request will be placed at the end of the queue to await further action in turn after other waiting requesters have been served.

f. After any materials responsive to a particular public request are collected, they are reviewed for declassification and release. In reviewing documents for declassification, the Access Management staff often seeks the subject matter expertise of interested Federal agencies. This expertise is obtained through the referral of copies of

responsive documents to appropriate agencies for review and recommendation or through consultation.

g. Copies of responsive documents that were originated by a Federal agency but located among NSC files may be referred to the originating agency for a release determination and direct response by the agency to the requester.

h. In light of the NSC's official recordkeeping practices, records normally will be made available in paper form. Exceptions to this policy will be made where electronic versions of records exist in an accessible form, and it is feasible for the NSC to provide public access to records in that form.

Sec. 2.4 Requests for Reconsideration

a. Requests for reconsideration of decisions not to release requested documents, or portions thereof, should be addressed to the Executive Secretary, National Security Council, Washington, D.C. 20504, within sixty (60) days from the date the requester receives written notification of the denial. This appeal process does not include reconsideration of notifications that no responsive documents were located in a search of NSC files.

b. Requests for reconsideration will be placed in a separate queue to be acted on in turn. The Access Management staff will process such requests as expeditiously as possible.

Sec. 2.5 Availability of Released Records

Upon release to an individual requester, NSC numbered policy documents are also deposited with the National Archives and Records Administration for general public reference.

Sec. 2.6 Fee Schedule

The NSC reserves the right to establish a fee schedule for the search and reproduction of information available under this public access policy.

Glyn Davies,

Executive Secretary.

[FR Doc. 98–12343 Filed 5–7–98; 8:45 am]

BILLING CODE 3150–01–P

federal register

Friday
May 8, 1998

Part VI

Environmental Protection Agency

Definition of a Public Water System in SDWA Section 1401(4) as Amended by the 1996 SDWA Amendment; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6011–8]

Definition of a Public Water System in SDWA Section 1401(4) as Amended by the 1996 SDWA Amendments

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking comments on the draft guidance ''Definition of a Public Water System in SDWA Section 1401(4) as Amended by the 1996 SDWA Amendments.'' The draft guidance is published as an Appendix to this notice.

DATES: Comments must be submitted on or before June 22, 1998.

ADDRESSES: Comments should be addressed to Jon Merkle, Drinking Water Office—(WTR–6), EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments may also be submitted by E-mail to merkle.jon@epamail.epa.gov. Commenters who want EPA to acknowledge receipt of their comments must enclose a self-addressed, stamped envelope.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, or Jon Merkle, telephone (415) 744–1844.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

This notice publishes draft guidance which is intended to interpret the broadened definition of what type of water suppliers will be defined as a ''public water system'' in light of revisions to this term by the 1996 amendments to the SDWA. Before the 1996 amendments, the SDWA defined a ''public water system'' as a system that provided piped water for human consumption to the public and had at least fifteen service connections or regularly served at least twenty-five individuals. The 1996 amendments expanded the definition of ''public water system'' to include systems providing water for human consumption that deliver this water by ''constructed conveyances,'' such as irrigation canals.

The definition of a ''public water system'' is central to delineating the scope of many SDWA requirements and this notice is designed to solicit public comment on the specific provisions in the new definition and its suggested implementation.

Specific Issue for Commenters to Consider

The Agency is particularly interested in comments on the implementation of the provision regarding certain piped irrigation districts (Section III of this document) in new section 1401(4)(B)(ii) of the SDWA. The statute provides that a piped irrigation district in existence prior to May 18, 1994, which provides primarily agricultural service with only incidental residential or similar use shall not be considered a public water system (PWS) if it or its users comply with the alternative water or treatment exclusions for constructed conveyance suppliers in section 1401(4)(B)(i)(II) or (III).

The statutory language is ambiguous as to whether all connections to the system used for human consumption must comply with this provision, or whether only as many connections for human consumption must comply so as to reduce the remaining number of connections to fewer than fifteen.

The draft guidance would require all connections to the irrigation district that use the district's water for human consumption to comply with the alternative water or treatment exclusions. More of the States on the workgroup that commented on this question preferred the approach taken in this draft guidance over the approach discussed below as an alternative.

EPA's interpretation of this provision is based on the realities that these piped districts were already considered PWSs under the pre-1996 definition, that the only change in the status of these piped irrigation districts in the 1996 SDWA Amendments was to provide them an opportunity to use these exclusions to remove themselves from PWS status, that this opportunity is not available to any other types of piped water systems, and that compliance with these exclusions is much simpler and less costly than the compliance required of PWSs with the entire SDWA (which can be avoided by appropriate use of the exclusions). Under these circumstances, EPA believes that the approach taken in the draft guidance is equitable and appropriate and protective of public health.

The approach taken in the draft guidance is supported by Report 104–169 of the Senate Environment and Public Works Committee on S. 1316, which states that ''[t]hese piped (irrigation) systems are not to be considered public water systems if all of the connections to the system comply with the requirements applicable under one or the other of the exclusions for alternative water or point-of-entry treatment.'' (p. 89, emphasis added). The irrigation district provision enacted in the SDWA Amendments is identical to the one first adopted in S. 1316 by the Senate Committee.

Finally, this approach provides an incentive to piped irrigation districts to give equal protection to all their connections for human consumption. This would prevent situations from arising where some users could receive untreated water while users at the excluded connections receive water that meets the requirements of the exclusion, *i.e.* it meets the equivalent level of protection provided by the applicable national primary drinking water regulations (NPDWRs). EPA believes that the support of the majority of the workgroup States that expressed an opinion on this point indicates that they intend to apply it in a way that would avoid unfairness to irrigation districts which seek in good faith to comply with the exclusions, but are prevented from applying them to all connections because a few users refuse to allow the use of the exclusions for their water supply.

EPA and the workgroup considered an alternative approach, which would allow qualifying irrigation districts to use the same method of counting or excluding connections as suppliers of water through constructed conveyances. Specifically, they could remove themselves from PWS status by reducing the number of counted connections to fewer than 15. This alternative approach would prevent any possibility of unfairness to irrigation districts that seek in good faith to comply with the exclusions but find that a few users refuse to allow the system to take the actions necessary to qualify for the exclusions for their water supply.

If after receiving comments on these two approaches, EPA decides to revise the guidance to take the alternative approach, then questions and answers 8 and 9 in the *Questions and Answers* section of the guidance would be modified or deleted to reflect this decision.

Dated: May 5, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

Appendix—Draft Guidance on Implementation of Amended Public Water System Definition

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Introduction

This document provides guidance to the primacy agencies [1] and the U.S. Environmental Protection Agency's (EPA's) regional offices in their implementation of the Safe Drinking Water Act's (SDWA) 1996 amendments to the definition of a public water system (section 1401(4)).

This document incorporates and replaces the preliminary guidance on this topic issued December 6, 1996, by Assistant Administrator for Water Robert Perciasepe entitled ''Safe Drinking Water Act Amendment to Public Water System Definition.'' It is a collaborative effort between the Office of Water and the Office of Enforcement and Compliance Assurance (OECA). OECA has concurred with the contents of this document and will incorporate and implement it through their enforcement and compliance assurance directives and operating protocols.

Background

The term *public water system* (PWS) is central to delineating the scope of many SDWA requirements. Prior to the 1996 SDWA amendments, Section 1401 of the SDWA defined a *public water system* as ''a system for the provision to the public of piped water for human consumption if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.'' In *Imperial Irrigation District* v. *United States Environmental Protection Agency*, 4 F.3d 774 (9th Cir. 1993), the court ruled that the SDWA provisions governing PWSs did not apply to an irrigation district supplying residences, schools and businesses with untreated water through open canals. In response, Congress changed the definition of public water system to regulate under SDWA ''water (provided) for human consumption through pipes or other constructed conveyances.'' This change reflected Congress' understanding that the human consumption of such untreated canal water could constitute a significant risk to public health, and that appropriate measures were warranted to provide consumers of this water with a level of health protection equivalent to that from drinking water standards. At the same time, Congress provided several means by which certain water suppliers could be excluded from this definition, and provided that systems newly subject to SDWA regulation under this amended definition would not be regulated until August 6, 1998.

The amended section 1401(4) does several things. First, effective August 6, 1998, section 1401(4)(A) expands the definition of a PWS to include suppliers of water for human consumption that deliver their water through canals and other constructed conveyances. Second, section 1401(4)(B)(i) supplies methods by which connections to these newly defined PWSs will not be considered ''connections'' if the systems or users at these connections have taken specific actions to ensure protection of public health. If, after the systems or users have taken these specific actions to ensure protection of public health and the systems no longer serve at least 15 service connections or 25 individuals, the systems will not be considered to be PWSs. Third, section 1401(4)(B)(ii) also allows certain piped irrigation districts to no longer be considered public water systems if the districts or their users take specific actions to ensure public health.

As promised in the December 6, 1996 guidance, EPA convened an EPA-State work group to develop more detail on the interpretation and application of this new definition. State members of this work group included drinking water program representatives for Arizona, California, Georgia, Idaho, Texas and Washington. The work group consulted with thirteen individual irrigation water suppliers and irrigation trade associations within these States. The workgroup also consulted with six organizations involved with community-based minority health and welfare issues and interviewed three persons who use canal water for human consumption.

Application of Section 1401(4)

I. Systems Newly Defined as Public Water Systems

A. Statutory Language

As described above, effective August 6, 1998, Section 1401(4)(A) of the SDWA [2] expands the definition of a PWS to read as follows:

> The term *public water system* means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes
> (i) any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system, and
> (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

This revised definition broadens the means for delivering water that will qualify a water supplier [3] as being a public water system from pipes to ''pipes or other constructed conveyances.'' Thus, as of August 6, 1998, in accordance with this provision and EPA's regulations, water systems providing water for human consumption through constructed conveyances to at least fifteen service connections or an average of twenty-five individuals daily at least 60 days per year will be defined as public water systems subject to SDWA regulation. See 40 CFR 141.2. EPA has interpreted the term *human consumption* to include drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene, and this interpretation has been upheld by the courts. See *United States* v. *Midway Heights County Water District*, 695 F. Supp. 1072, 1074 (E.D. Cal. 1988) (''*Midway Heights*'').

In order to obtain or maintain primacy, States must adopt this new definition of public water system or a more stringent definition and submit this portion of their State primacy programs for approval to EPA in accordance with Section 1413 of the SDWA and 40 CFR Part 142.

B. Interpretation of ''Constructed Conveyance''

As of August 6, 1998, systems that deliver water for human consumption through constructed conveyances other than pipes to the requisite number of connections and/or individuals will be defined as PWSs subject to SDWA regulation. The term *constructed conveyance* is not limited by the SDWA as to the size of the conveyance or the

[1] Primacy agency refers to either the EPA or the State or the Tribe in cases where the State or Tribe exercises primary enforcement responsibility for the public water systems.

[2] All references in this Guidance to section 1401 refer to section 1401 of the SDWA.

[3] As used in this Guidance, and as indicated in section 1401(4)(C), the term *water supplier* broadly refers to any water provider that may be subject to regulation as a public water system under the SDWA. This term should not be confused with *supplier of water*, which is defined in the SDWA as ''any person who owns or operates a public water system''. See SDWA Section 1401(7).

character of the delivery system. The term refers broadly to any manmade conduit such as ditches, culverts, waterways, flumes, mine drains or canals. The term constructed conveyance does not include water that is delivered by bottle, other package unit, vending machine or cooler, nor does it include water that is trucked or delivered by a similar vehicle.[4]

Water bodies or waterways that occur naturally but which are altered by humans may, in some cases, be constructed conveyances. Whether a particular water body or waterway is a constructed conveyance for purposes of section 1401(4) depends on the totality of facts that characterize whether the water body or waterway is essentially a natural water body or waterway, or whether it is essentially a manmade conduit. Specifically, the primacy agency should first decide whether a water body is manmade, or ''constructed,'' by determining whether or not it exists in its current configuration substantially from human modifications such as mining, dredging, channelization, bed or bank modification, maintenance, etc. Second, the primacy agency should determine whether the water body is a conduit, or ''conveyance,'' by examining who owns or controls the water and the reason why water is present: Whether it is present perennially through natural precipitation and runoff or discharge of natural springs, or whether its flow is present primarily by human means and in order to convey the water to users as part of a network under the management of the water supplier. If both of the above-described factors are present, at least as to particular users whose status as ''connections'' is in question, the water body is a constructed conveyance. Primacy agencies should also use the totality of circumstances to determine whether natural waterway portions of a water delivery system composed in part of constructed conveyances are part of a public water system.

While irrigation-related entities and their canals are likely to be the most common systems newly defined as PWSs under the expanded definition in section 1401(4), mining and other industrial entities that convey water may also fit within the definition if their water is used for human consumption.

[4] One or more of these water delivery methods may under certain circumstances be considered public water systems under existing interpretations of other parts of the definition of a public water system.

C. Identification of Public Water Systems Under the Revised Definition

Primacy agencies should examine their areas of jurisdiction to determine if there are any water suppliers that meet the new public water system definition. Whether a water system is providing water through constructed conveyances to at least fifteen service connections or an average of twenty-five individuals daily at least 60 days per year should be determined by whether the water supplier knows or should know that the connections exist or that the individuals are using water from the water system for human consumption. In *Midway Heights*, the court held that the county water district either knew or should have known to a substantial certainty that individuals were using the district's water for human consumption based on the locations and arrangements of the pipes and plumbing, the fact that a pipe ran from the system into a number of homes, and a specific provision in an agreement between the water district and the users instructing the users to make the water potable before using it for human consumption. The court further found that a ''waiver'' agreement between the water district and the users that purported to limit the use of the district's water to irrigation was ineffective to remove the water system's liability under the SDWA. Likewise, EPA does not consider a waiver signed by water users stating that they must not use or are not using water for human consumption to preclude the water supplier from being considered a PWS when the system knows or should know that it is supplying water for human consumption to at least fifteen connections or an average of twenty-five regularly served individuals.

In order for water suppliers that may be newly defined as public water systems under the revised definition to determine whether they will, in fact, be defined as PWSs as of August 6, 1998, the suppliers should undertake before this date any necessary actions (*e.g.*, a survey of any water users that might be using the water for human consumption) to ascertain their users' water use patterns. While water suppliers should take the initiative to assess and characterize their water use situations to the primacy agency as a core element of such surveys, such suppliers can also offer their users the opportunity to describe their water use situations to the supplier. Suppliers should determine from users that might be using their water for human consumption whether the water they supply is currently used for any of the human consumptive uses outlined above, *i.e.*, drinking, bathing, showering, cooking, dishwashing, or maintaining oral hygiene, and, if so, which such uses. Suppliers should also document whether additional or alternative sources of water are used for human consumption, *e.g.*, whether a private well, bottled water, or hauled water is used, and for what purposes these additional sources of water are used. Suppliers should determine and document whether the users are connected to a central treatment plant or use a point-of-entry device. Some suppliers have already performed surveys to gather information regarding their users' water use patterns.

In addition to undertaking a survey or other action to document water use patterns, water suppliers will need to consider any other available information that indicates that their users are in fact using the water for human consumption. As stated above, where a water supplier knows or should know that the requisite number of connections and/or individuals are using its water for human consumption, the primacy State or EPA will consider the system to be a PWS. The results of any survey and other available information should provide a basis for ascertaining whether a water supplier has at least fifteen service connections or regularly serves at least twenty-five individuals and would therefore be considered a PWS. EPA or the primacy State will expect documented evidence of the suppliers' best efforts to ascertain these water uses. A supplier's failure to make such an effort to gather any necessary information and provide sufficient documentation will not excuse the supplier from liability under the SDWA.

Primacy agencies should determine what form of records they will need from water suppliers to implement this provision. In addition to surveys, primacy agencies may want to consider requiring suppliers to submit annual affidavits documenting such information as the number of connections and users to whom they serve water, the uses of that water, and whether alternative water is supplied. Primacy agencies should also determine how often they will need updated records and how suppliers should maintain these records (*e.g.*, schedule, location, availability).

Pursuant to its regular oversight responsibilities, EPA can review State determinations of whether a system is a PWS. If EPA has serious concerns with the result of a State's determination, it will discuss these matters with the State regarding a potential reconsideration of the determination. In the event EPA cannot resolve the matter with the State,

SDWA Section 1414 continues to authorize EPA to bring an enforcement action against a system to support the position that the system is a PWS.

If a water supplier provides water for human consumption through constructed conveyances other than pipes to at least twenty-five individuals or fifteen connections at any time on or after August 6, 1998, the supplier will be considered a PWS. Such a supplier may avoid regulation as a PWS only if it qualifies for the exclusions provided in section 1401(4)(B)(i) and thereby reduces its ''connections'' to fewer than fifteen connections regularly serving fewer than twenty-five individuals. Information gathered in suppliers' surveys will aid the suppliers in deciding whether they may qualify for or should apply to the primacy agency for these exclusions, and in documenting their case for any such exclusions. The exclusions are described in detail in Section II below.

II. The Exclusions in Section 1401(4)(B)(i)

A. Statutory Language

Section 1401(4)(B)(i) provides limited exclusions to the ''connection'' component of the PWS definition to systems that deliver water through constructed conveyances other than pipes. These exclusions are not available to piped water systems, with the exception of certain piped irrigation districts described in section 1401(4)(B)(ii) and discussed in section III, below.

Specifically, Section 1401(4)(B)(i) provides that a connection to a system that delivers water through constructed conveyances other than pipes is excluded from consideration as a ''connection'' for purposes of section 1401(4)(A) under three circumstances:

(1) Where the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(2) Where EPA or the State (where the State has primary enforcement responsibility for PWSs) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulations is provided for drinking and cooking;

(3) Where EPA or the State (where the State has primary enforcement responsibility for PWSs) determines that the water provided for drinking, cooking, and bathing is treated (centrally or by point of entry) by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

If the application of one or more of these exclusions reduces the ''connections'' of a system providing water for human consumption (through constructed conveyances other than pipes) to fewer than fifteen service connections that serve fewer than twenty-five individuals, the supplier's water system is not a PWS regulated under the SDWA.[5]

However, if the supplier's remaining connections number fifteen or more, or if its remaining connections (even if they number fewer than fifteen) regularly serve at least twenty-five individuals, then the system is a PWS, although the excluded connections are not considered part of the PWS for as long as the exclusions apply and the system complies with any conditions governing their applicability.

B. Application of Section 1401(4)(B)(i)

1. The ''Other Than Residential Uses'' Exclusion

Whether the first of the three exclusions in section 1401(4)(B)(i) applies depends on the facts surrounding a user's use of the water. If water provided by a water supplier to a particular connection is used exclusively for purposes other than residential uses, consisting of drinking, bathing, and cooking, or similar uses, the exclusion in section 1401(4)(B)(i)(I) applies automatically to that connection without a formal determination by the primacy agency as to its applicability. However, the primacy agency may still request that the supplier verify the nonresidential use of the water through a survey or other mechanism that evidences whether the supplier may be subject to regulation as a PWS. An example of where this exclusion would apply is when a user obtains all water for drinking, bathing, cooking, and similar uses from a private well, while the supplier provides the user with water for toilet flushing and/or outside irrigation.

2. The Alternative Water and Treatment Exclusions

The next two exclusions are not ''automatic;'' they apply only after the primacy agency has made the factual determination that the supplier complies with the exclusion criteria. If the primacy agency provides the supplier with a written determination that the exclusions in sections 1401(4)(B)(i)(II) and (III) apply, then an eligible water supplier can reasonably rely on those exclusions, as long as they continue to be maintained in practice, to avoid classification as a PWS subject to the SDWA or to continue to provide users of ''excluded connections'' with water for human consumption that does not comply with the SDWA requirements applicable to PWSs. Suppliers seeking to exclude connections under section 1401(4)(B)(i)(II) and/or (III) are responsible for ensuring that the primacy agency has sufficient information and documentation to demonstrate compliance with the exclusion criteria prior to the primacy agency's making a determination.

The Alternative Water Exclusion. A water supplier seeking to exclude a particular connection pursuant to section 1401(4)(B)(i)(II) must demonstrate to the primacy agency that it is providing users at that connection with water for drinking and cooking from another source such as bottled water or hauled water. To qualify for this exclusion the supplier must provide the water to the users, at a reasonable location, not merely make it available. Whether the alternative water provided by the supplier is being provided at a reasonable location, such as on the user's doorstep or at the property line, will be determined by the primacy agency on a case-by-case basis. The supplier must demonstrate that it is actually providing to the users a minimum amount of water adequate to meet the users' drinking and cooking needs. The supplier need not provide alternative water to meet the users' bathing needs. The exclusion does not apply to a connection where the users, not the supplier, provide alternative water for drinking and cooking. In such cases, the supplier cannot ensure that the alternative water is reliably providing a level of public health protection equivalent to that provided by the applicable national primary drinking water regulations (NPDWRs).[6]

The primacy agency must also make the factual determination that the alternative water provided for drinking and cooking actually achieves the equivalent level of public health protection provided by applicable NPDWRs. The primacy agency will make this determination based on its own criteria regarding which alternative water sources, and which associated

[5] The three exclusions above do not otherwise affect the manner in which primacy agencies have defined a connection for the purposes of the SDWA.

[6] *Applicable national primary drinking water regulations* means the NPDWRs that would apply to the water supplier if all its connections excluded pursuant to the alternative water and treatment exclusions were counted as connections.

documentation, operational, monitoring, reporting or other requirements, achieve the equivalent level of public health protection provided by applicable NPDWRs. The primacy agency should not necessarily assume that all varieties of bottled or hauled water will achieve the requisite level of public health protection absent information about the source and quality of the water. Where existing State regulations governing bottled and/or hauled water provide the equivalent level of public health protection provided by applicable NPDWRs, an alternative water purveyor's compliance with such regulations would provide adequate assurance that the alternative water actually achieves the requisite level of public health protection.

The water supplier may charge the users for the reasonable cost of the water supplied. The water supplier may also contract with a third party to deliver the water at a reasonable cost to the user, but in such case the supplier remains responsible for ensuring that the alternative water is provided to the users.

The Treatment Exclusion. A water supplier seeking to exclude a particular connection pursuant to section 1401(4)(B)(i)(III) must demonstrate to the primacy agency that the water that it supplies for drinking, cooking and bathing at that connection is centrally treated [7] or treated at the point of entry by the provider, a pass-through entity, or the user. A pass-through entity is an entity other than a water supplier referred to in section 1401(4)(B) or its users that has been contractually engaged by the water supplier or the user to provide the treatment described in section 1401(4)(B)(i)(III). The supplier must submit information and documentation to the primacy agency demonstrating that central treatment or a point-of-entry treatment device is actually in use and treating all water used for drinking, cooking and bathing at that connection.

The primacy agency must also make the factual determination that the treated water actually achieves the equivalent level of public health protection provided by the applicable NPDWRs.[8] The primacy agency will make this determination based on its own criteria, which can include appropriate, independent third party (such as the National Sanitation Foundation) certification or performance verification, regarding which types of treatment devices may be used, and which associated operational, monitoring, reporting or other requirements are necessary, to ensure that the provided water actually achieves the equivalent level of public health protection provided by applicable NPDWRs. This third party verification generally describes a range of contamination levels in the raw (untreated) water that the treatment device can effectively address. Where local variability of source water conditions indicates a need—as where the raw water is highly contaminated—primacy agencies could choose to require more site-specific pilot testing. National third party performance verification will still be helpful in such cases as a guide to the water quality parameters (levels of contamination) that will (or will not) present problems for technology performance with the type of contaminant and treatment process involved. EPA's listing of point-of-entry compliance technologies may also be helpful, as the listings may include a statement of certain limitations on the use of a specific technology for compliance that can focus primacy agencies' attention on key performance parameters.

The words ''equivalent level of public health protection'' are meant to distinguish the situation of providers covered by this section from the situation of public water systems which must comply with all relevant aspects of the applicable regulations, including sampling and testing requirements and sometimes details of treatment. For example, a point-of-entry treatment device for filtration and disinfection might not comply with all requirements of relevant drinking water rules for monitoring, extent of surveillance of the disinfection process, and so forth. But, it would meet the ''equivalent level of public health protection'' requirement of this section if the quality of the water it produces is similar to that from central filtration and disinfection. Thus, this requirement is a performance standard providing that the quality of the water that affected residential users get should be similar to that from central treatment.

As stated in section 1401(4)(B)(i)(III), treatment may be provided by the water supplier seeking to qualify for the exclusion, by a pass-through entity, or by the user. However, because the exclusion cannot be granted unless the treatment actually provides an equivalent level of public health protection, as a practical matter the supplier will need to be responsible for ensuring that this is the case to enable the primacy agency to make the necessary determination.

III. The Exclusion in Section 1401(4)(B)(ii) for Certain Piped Irrigation Districts

All piped water systems providing water for human consumption to at least fifteen service connections or twenty-five regularly served individuals were defined as PWSs subject to SDWA regulation prior to the 1996 amendments. The amendments, however, provide a new exclusion for a specified group of these PWSs. Section 1401(4)(B)(ii) provides:

An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).

The exclusion provisions for qualifying piped irrigation districts were effective immediately upon passage of the 1996 amendments, in contrast with the expanded definition of public water system in section 1401(4) as applied to constructed conveyance systems, which becomes effective on August 6, 1998.

An irrigation district referred to in section 1401(4)(B)(ii) that would otherwise be defined as a PWS may avoid regulation as a PWS only if the primacy agency determines that all connections to the district that use the district's water for human consumption comply with subclause (II) or (III) of section 1401(4)(B)(i). In contrast to systems providing water through constructed conveyances, these districts cannot avoid regulation as a PWS by simply ''reducing connections'' to fewer than fifteen connections serving fewer than twenty-five individuals by application of the exclusions in subclauses (II) and (III).

Only those irrigation districts that existed prior to May 18, 1994, and which provide primarily agricultural service through piped water systems with only incidental residential or similar use, are eligible to apply for these exclusions. The agricultural exclusion is available for commercial agriculture only. *Incidental residential or similar use* refers to human consumptive uses that are closely and functionally related to the primary agricultural service provided by the irrigation district. For example, the use of water for human consumption by the residents of a farmhouse working on agricultural property, from a connection used primarily for irrigation of that property, is incidental to the primarily

[7] However, a system that centrally treats water for 15 or more connections or 25 or more individuals is itself a public water system and subject to the NPDWRs.

[8] *See* footnote 5.

agricultural use of the water. Similarly, human consumptive use by farmworkers residing on agricultural property is incidental to the primary agricultural service provided to that property by the district. In contrast, the use of water for human consumption from a connection to an irrigation district's pipe by a cluster of homes in a subdivision is not ''incidental'' to the district's primary agricultural service. If the character of the irrigation district's service changes so that the district no longer provides primarily commercial agricultural service with only incidental residential or similar use, the district would no longer qualify for this exclusion.

Questions and Answers

Q1: How can primacy agencies identify water suppliers that may be newly defined as public water systems under the revised definition of public water system in section 1401(4)?

A1: Primacy agencies will likely benefit by tapping into the knowledge base of their inspectors, following up on citizen water quality complaints in irrigation and mining areas and developing inventories of irrigation and other constructed conveyance water suppliers. State agriculture departments, mining regulatory agencies and water resource departments can help develop these inventories. EPA recommends that the primacy agency send a letter to possible new PWSs informing them of the requirements of the 1996 amendments, the systems' potential SDWA responsibilities, and the systems' responsibility to determine whether and how many of their users are using their water for human consumption. EPA further recommends that primacy agencies suggest that the suppliers undertake any necessary actions (*e.g.,* a survey of any water users that might be using the water for human consumption) to ascertain their users' water use patterns. Primacy agencies may wish to request that water suppliers providing water through constructed conveyances other than pipes provide them with annual, affirmative documentation such as affidavits or other certifications identifying the connections and users to whom they serve water, and identifying the connections and users using their water for human consumption and residential uses. This would be a means for primacy agencies to verify suppliers' documentation of the number of connections using their water for human consumption.

Q2: Because most water suppliers cannot inspect the interiors of their users' premises, on what evidence should the suppliers base their conclusions about their users' water use?

A2: A survey of users by the supplier that includes affirmative documentation as to the types of uses made of the water would be sufficient in most cases. The supplier should look to evidence that may be available such as the likely availability of potable ground water in the area, empty water bottles awaiting pick-up, observations by company personnel and patterns of water use at that connection that indicate whether human consumption of the water provided by the supplier is probable.

Q3: Some water suppliers have warned their users that their water is nonpotable or is not for human consumption without treatment. Some have offered the water for sale only on the condition that it will not be used for human consumption. Other suppliers have required their users to sign statements that the water will not be used for human consumption or that the supplier is not liable (and the user assumes the risks) if the water is used domestically. If, nevertheless, a user uses water for human consumption in the face of these or similar conditions, must the water supplier count the user as a connection for the purposes of section 1401(4)?

A3: Yes. The controlling element here is whether the water supplier is delivering water that the supplier knows or should know is being used for human consumption.

Q4: There are several kinds of nonpaying water users. Some water suppliers are plagued by ''midnight'' or transient water thieves who take water for a very short period of time. Their identities are usually unknown. Other nonpaying users are found to have taken water surreptitiously for a longer period but still without the permission of the supplier. A third group consists of nonpaying users who have taken water openly for a considerable length of time with the knowledge but without the consent of the supplier. Some users have continued taking water directly from canals or ditches with buckets and other containers after their pump/siphon intakes were eliminated by the supplier. Which of these users are counted as ''connections'' within the meaning of section 1401(4)?

A4: The primacy agency should look at the totality of the relationship between the water supplier and the nonpaying user to determine if the relationship is of sufficient strength to constitute a ''connection'' or ''individual served'' by the system. The supplier's knowledge of water withdrawals and the permanency of the withdrawals is more important in this relationship than the payment of fees. The supplier is expected to monitor its operation as a regular part of its business and to be aware of water withdrawals. If the water supplier knows or reasonably should know of the taking of the water, there is probably a connection within the meaning of section 1401(4).

Q5: Where a water supplier provides water for human consumption through pipes or other constructed conveyances, does the geographic isolation of that water supplier's users affect whether such users are counted as connections or individuals served by the supplier?

A5: No. All water users to whom the water supplier provides water for human consumption are counted as connections or individuals served by the supplier regardless of their geographic isolation from other users, unless such connections are otherwise excluded pursuant to section 1401(4)(B).

Q6: Are the exclusions in section 1401(4)(B)(i) available to a water supplier that operates a system that consists primarily of non-piped constructed conveyances, but which includes some limited ''piping'' such as siphons to pass under roads or washes, short tunnels through hills, etc.?

A6: Yes, assuming the exclusion criteria apply. Only those suppliers that convey water by means other than pipes, and which are newly defined as public water systems under the expanded definition in section 1401(4)(A), may use the exclusions available under section 1401(4)(B)(i) to avoid regulation as a public water system. Suppliers whose piping consists only of the limited piping described above are not considered to convey water by pipes. A primacy agency should not make a determination that a supplier is a piped water system, either as to specific connections or entirely, if it would not have been able to do so under SDWA prior to the changes enacted to section 1401(4). It should be noted that section 1401(4)(B)(ii) provides a separate exclusion to a specified group of piped irrigation districts, as discussed in Section III above.

Q7: If a water supplier delivers water for human consumption through a constructed conveyance other than a pipe and reduces its number of countable connections through the operation of 1401(4)(B)(i) to 15 connections using water for human consumption does it have to supply SDWA-complying water only to these 15 connections or to all of its connections?

A7: The water supplier is under an obligation to supply SDWA-complying water only to the 15 connections.

Q8: Is an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use considered to be a public water system if just one connection fails to comply with subclause (II) or (III) of clause (i)?

A8: Yes. All connections to this kind of public water system must comply with subclause (II) or (III) of clause (i) before the supplier will not be considered a public water system.

Q9: In the example immediately above, is the irrigation district under an obligation to comply fully with SDWA with regard to just the one connection described or to all of its connections?

A9: The water supplier must comply fully with SDWA with regard to all of the connections to the public water system using water for human consumption.

Q10: What financial options are available to water suppliers that will be newly defined as PWSs as of August 6, 1998 under the expanded definition of PWS in section 1401(4) and to suppliers that wish to make use of the exclusions in section 1401(4)(B)?

A10: There are various financial options available to those water suppliers. First, public water systems are eligible for Drinking Water State Revolving Fund loans—with subsidies available to disadvantaged communities. Even those water suppliers that wish to exclude connections through use of point-of-entry treatment or central treatment pursuant to section 1401(4)(B)(i)(III) are eligible for these loans to provide such treatment. In addition, some communities known as ''colonias'' may be eligible for assistance through federal grants to border States intended to provide assistance to such communities to facilitate compliance with SDWA requirements, although such grant funding has not previously been appropriated for this purpose. Finally, water suppliers providing alternative treatment have all the financial options regarding amortization and charging costs to users they would have for any other capital investment.

Disclaimer

This document provides guidance to EPA Regions and States exercising primary enforcement responsibility under the SDWA concerning how EPA interprets the amended definition of *public water system* under the SDWA. It also provides guidance to the public and the regulated community on how EPA intends to exercise its discretion in implementing the statute and regulations defining *public water system*. The guidance is designed to implement national policy on these issues. The document does not, however, substitute for the SDWA or EPA's regulations, nor is it a regulation itself. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches that differ from this guidance on a case-by-case basis where appropriate. EPA may change this guidance in the future.

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